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No. 2202

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

THE STEAMSHIP GEO. W. ELDER, HER MA-
CHINERY, TACKLE, APPAREL, ETC., J. H.
PETERSON and C. P. DOE,

Claimants and Appellants,

vs.

THE PORT OF PORTLAND,

Libelant and Appellee,

Upon Appeal from the United States District
Court for the District of Oregon.

TRANSCRIPT OF RECORD.

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Court of Appeals
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PETERSON and C. P. DOE,

Claimants and Appellants,

vs.

THE PORT OF PORTLAND,

Libelant and Appellee,

**Names and Addresses of Proctors
upon this Appeal:**

For the Appellants:

Milton W. Smith, Selling Bldg., Portland, Oregon

For the Appellee:

Wood, Montague & Hunt, Spalding Bldg.,
Portland, Oregon

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BE IT REMEMBERED, That on the 8 day of November 1906, there was duly filed in the District Court of the United States for the District of Oregon, a Libel, in words and figures as follows, to wit:

[Libel.]

*In the District Court of the United States for the
District of Oregon.*

THE PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her machinery, tackle, apparel, etc.

To the Honorable Charles E. Wolverton, Judge of the above entitled court:

The Port of Portland, a municipal corporation created by and existing under certain acts of the Legislative Assembly of the State of Oregon, presents its libel against the steamship George W. Elder, her machinery, tackle, apparel, etc., whereof J. H. Peterson is, or lately was, owner in a cause of contract civil and maritime, and thereupon your orator articulately propounds and alleges as follows:

I.

At all the times hereinafter set forth libellant was, and is, a corporation created by and existing under certain acts of the Legislative Assembly of the State of Oregon, with power, among other things, to sue and be sued, and with power, among other things, to operate a drydock within the limits of the Port of

Portland; and at all of such times has operated, and now operates, a sectional floating drydock within the County of Multnomah and State of Oregon, and within the limits of the Port of Portland.

II.

At all the times hereinafter set forth the steamship George W. Elder was, and is, a vessel plying the waters of the United States, and at all of such times J. H. Peterson, as libellant is informed, and therefore so avers, was, and still is the owner of said vessel, and at all of such times said vessel was, and still is within the territorial limits of the State of Oregon, and was, and still is within the District of Oregon and subject to the jurisdiction of this Honorable Court.

III.

Heretofore, and between the 29th day of May, 1906, and the 18th day of September, 1906, at the instance and request of the said J. H. Peterson, as owner of the said vessel, and upon the faith and credit of the said vessel, libellant lifted upon its said drydock, within the limits of the Port of Portland, the said steamship George W. Elder, and furnished drydockage for said vessel from said 29th day of May, 1906, to the 18th day of September, 1906, and the reasonable value of which said services, and the schedule rate for which said services was the sum of Ten Thousand Five Hundred and Thirty-three Dollars and Sixty Cents (\$10,533.60), and in addition thereto, at the instance and request of the owner of

said vessel, and upon the faith and credit of said vessel, libellant performed four hundred and sixty (460) hours of extra labor upon said vessel, which, at the reasonable rate of thirty (30) cents per hour, amounts to the further sum of One Hundred and Thirty-eight Dollars (\$138); and in addition thereto in the raising and lowering and repairing of said vessel, and through the fault of said vessel, damage was sustained to keel blocks and wedges, amounting to the further sum of Ninety-four Dollars and Twenty-five cents (\$94.25). No part of said sum has been paid, though demanded, save and except the sum of seven Thousand two hundred ninety-four Dollars and Fifty-five Cents (\$7,294.55), and there is now due, owing and payable from said vessel and her owner to libellant the balance of Forty-seven Hundred and Eighty-eight Dollars (\$4788).

IV.

Said drydockage was furnished upon the faith and credit of said vessel, and under and by virtue of Section Fifty-seven Hundred and Six (5706) of the statutes of the State of Oregon as compiled by Charles B. Bellinger and W. W. Cotton a lien is created upon said vessel enforceable in admiralty.

V.

Demand has been made for the payment of said moneys, but the owner of said vessel refuses to pay the sum, or any part thereof.

VI.

ALL AND SINGULAR the foregoing premises

are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellant prays that proess in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said vessel, her machinery, tackle, apparel and furniture, and that all persons claiming an interest in said vessel may be cited to appear and answer,—but not under oath, the same being waived,—the matters and things in this libel contained, and that upon the final hearing this court may pronounce in favor of libellant's said demand with interest and costs, and that said vessel may be condemned and sold to pay the same, and for such other and further relief as is proper in the premises.

WILLIAMS, WOOD & LINTHICUM,
Proctors for Libellant.

THE PORT OF PORTLAND,
By A. L. Pease,
President.

UNITED STATES OF AMERICA,
State and District of Oregon—ss.

I, A. L. Pease, first being duly sworn, on oath say I am president of the above named libellant, and the foregoing libel is true as I verily believe.

A. L. PEASE,

Subscribed and sworn to before me this 6th day of

November, 1906.

[Notarial Seal.]

H. H. PARKER,
Notary Public for Oregon.

[Endorsed]: Libel. Filed November 8, 1906.

E. D. McKEE,
Clerk.

By G. H. Marsh,
Deputy.

UNITED STATES OF AMERICA,

State and District of Oregon—ss.

I, A. L. Pease, first being duly sworn, on oath, say
I am president of the above libellant, and the fore-
going libel is true as I verily believe.

A. L. PEASE.

Subscribed and sworn to before me this 6th day
of November, 1906.

[Notarial Seal.]

H. H. PARKER,
Notary Public for Oregon.

And afterwards, to wit, on the 3 day of December,
1906, there was duly filed in said Court, Excep-
tions to Libel, in words and figures as follows to
wit:

[Exceptions to Libel.]

*In the District Court of the United States for the
District of Oregon.*

THE PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her

machinery, tackle, apparel, etc.

To the Hon. Charles E. Wolverton, Judge of the District Court of the United States in and for the District of Oregon.

Now comes J. H. Peterson and Chas. P. Doe, claimants herein, and except to the libel of the Port of Portland for the reasons and upon the grounds following, to-wit:

I.

Because the Statutes of the State of Oregon purporting to incorporate said Port of Portland are contrary to the Constitution of the State of Oregon in that said statutes do not limit the term of office of the officers of said pretended corporation.

II.

Because the pretended statute purporting to authorize said Port of Portland to construct, operate or maintain a dry dock and to levy taxes therefor is unconstitutional and void: (1) Because the construction, operation or maintenance of said dry dock is not for municipal purposes or in any sense a public purpose; (2) Because such statute places no limit on the power of said corporation to contract debts; (3) Because said statute attempts to delegate to a body of individuals arbitrary powers to make rules, regulations and charges; (4) Because said statute provides for the exercise of legislative, executive and judicial powers by one body of officers; and (5) Because the title of said act does not embrace or specify the contents thereof in so far as the same purports to

authorize the construction, operation and maintenance of a dry dock.

III.

Because said statutes do not authorize said Port of Portland to make any claim or charge against any boat, steamship or vessel for being lifted upon said dry dock or resting there while undergoing repairs.

IV.

Because said libel discloses no maritime lien or claim within the jurisdiction of this Court.

In all of which particulars the said libel is imperfect and insufficient and therefore the said claimants are not bound to answer the same, and they pray that the said libel may be dismissed with costs.

Dated at Portland, Or., December 3, 1906.

MILTON W. SMITH,

Proctor for Claimants.

[Endorsed]: Exceptions. Filed December 3, 1906.

E. D. McKEE,

Clerk.

By G. H. Marsh,

Deputy.

And afterwards, to wit, on the 24 day of February, 1908, there was duly filed in said Court, an Opinion on Exceptions to Libel, in words and figures as follows to wit:

[Opinion on Exceptions to Libel.]

*In the District Court of the United States for the
District of Oregon.*

No. 4879.

THE PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc.WILLIAMS, WOOD & LINTHICUM for Libel
ant,

MILTON W. SMITH for Claimants.

This is a libel in rem to recover against the steamship George W. Elder, the averments showing in effect that the libellant is a municipality, with power to sue and be sued, and with power, among other things, to operate a dry-dock within the limits of the Port of Portland; that the George W. Elder is a vessel plying the waters of the United States; that between May 29th and September 18, 1906, at the instance and request of her owner, and upon the faith and credit of the vessel, the libellant lifted the vessel upon its dry-dock, and furnished "dry-dockage" thereof for the period of time intervening said dates and performed extra labor, and suffered damages, the reasonable value of which services and the amount of damage being set out; that by the statute of the State of Oregon, a lien is created upon the vessel enforceable in admiralty, and that demand for payment has been made and payment refused.

(WOLVERTON, District Judge:)

The libel is challenged by exceptions thereto, upon grounds following:

First. That the act constituting the Port of Port-

land as a municipality is unconstitutional, and especially as it respects the authority attempted to be conferred by which it is designed that the municipality shall construct and operate a dry-dock; and,

Second. That this Court is without competent jurisdiction, for the reason that the cause is not of a character cognizable in admiralty.

The constitutionality of the act incorporating the Port of Portland as originally enacted has been set at rest by the judgment of the Supreme Court of the State of Oregon in the case of *Cook v. The Port of Portland*, 20 Or., 580. Such judgment has been adopted by this court in *The John McCracken*, 145 Fed. 705, and it is not essential that the subject be again reviewed here.

But it is insisted that the amendatory act of the Legislative Assembly of the State of Oregon, which authorizes for the first time, the erection and maintenance of a dry-dock (See Session Laws 1901 p. 417), is unconstitutional insofar as it relates to such authority, because the subject thereof, namely, dry-docks, is not expressed in the title.

It may be at once conceded that any amendment to an act which introduces a subject not included in the title of the original act or the title of the amendatory act, nor germane to the subject embraced in either of such titles, operates in contravention of Art. IV. Sec. 20 of the State constitution, and is therefore nugatory and void. The question here, however, is whether a subject has been introduced by the amendatory act not connected with or germane to the

subject expressed in the title of the original act.

The title of the act is, "An Act to establish and incorporate The Port of Portland, and to provide for the improvement of the Willamette and Columbia Rivers, in said Port, and between said Port and the Sea." The title of the amendatory act is, "An Act to revise and amend an act entitled an act," etc. So that there is nothing added to the original title; no other subject introduced. The plain purpose of the act is to incorporate a municipality like a city is incorporated, and yet in the case of the incorporation of a city, with all of its complexity of powers conferred, the title is a very simple thing. I note, by turning to page 796 of the Session Laws of 1891, the next act following the Port of Portland act, "An Act to incorporate the City of Portland." This is all there appears of the title, notwithstanding the municipality is empowered, through its common council, to assess and levy taxes, to grant licenses, to prevent and remove nuisances, to appoint a harbor master, to regulate the building of wharves, to provide for the establishment of market houses, and to do the multitude of things incident to the regulation and welfare of a city and its government. All these, and other kindred matters of control and regulation, are always considered to be embraced by the one central subject—the incorporation of a city. Now, it seems perfectly natural that a municipality created for the purpose of improving and keeping open great waterways in aid of commerce should be given the authority to construct and maintain a dry-dock. It is as

easily germane to the subject embraced by the title as the construction or maintenance of wharves and docks is connected with the simple title for the incorporation of a city, or of the many and diverse other subjects of specific power conferred by the various provisions of the charter.

Section 2 of the original act purports to set forth in brief order the "object, purpose and occupation" of the corporation, which was to improve and maintain a ship's channel of a depth of 25 feet from the Cities of Portland, East Portland, and Albina to the sea; while section 2 of the amendatory act states the "object, purpose and occupation" to be to promote the maritime shipping and commercial interests of the Port of Portland. Section 3 reiterates the object and purpose as stated in section 2 of the original act.

It is urged that the additional object and purpose as set forth in section 2 of the amendatory act is the adding of another subject for legislation under the old title, and therefore demonstration that the amendatory act is unconstitutional.

There is, it seems to me a palpable vice in the premise. Section 2 of the amendatory act combines no new or distinct subject, but does suggest new matter, which is, by reasonable intendment properly connected with the principal subject, that of the incorporation of the Port of Portland. It is as nearly allied to that subject as the provision for the improvement of the Willamette and Columbia Rivers between the port and the sea. The central idea attending the en-

tire act, with all of its amendments, is to establish and incorporate a port under the designation of the Port of Portland. This is the real and paramount subject for legislation. The improvement of the channel of the two rivers and the promotion of maritime shipping and commercial interests of the port are incidental, and matters naturally and truly connected with the establishment and maintenance of the port, as naturally and truly so as the opening of streets, the establishment and maintenance of wharves, the providing of water and lights, the establishment of a fire and police system, and the maintenance of public parks by an incorporated city, incorporated under the simple title of "An act to incorporate the city of.....!....." It is a most natural thing for a port organized as such to deepen, if need be, and improve its harbor, to remove obstructions and deepen the channels entering such harbor, to maintain and operate dredges for the purpose, and to promote shipping and all commercial interests connected with the coming and departure of vessels laden with the products and fabrics of the home market and elsewhere. All these things are connected with and manifestly germane to the central subject. So with the objection interposed that the libellant is without power to construct and operate a dry-dock. The power is plainly conferred by the very letter of the amendatory act; and it would seem clear that the construction and maintenance of a public dry-dock is as nearly allied, and as directly germane, to the central subject of incorporating a port as the construction and

operation of dredges for improvement of the channels of the rivers leading into the harbor, and of the harbor itself; and, being so, the objection that the amendatory act, construed with the original, embraces more than one subject is clearly untenable. The principle involved is supported by *David v. Portland Water Committee*, 14 Or. 98.

It is further insisted that the amendatory act is also void because it authorizes the levy of taxes for the erection of such dry-dock, asserting that when so levied it is not for a public purpose. It is of manifest persuasion that a city may construct and maintain wharves for the use of the public, and it may charge tolls therefor. It could lawfully maintain a ferry across the stream adjacent to or passing through the city limits, and charge tolls, which being so, the Port of Portland could as consistently maintain and operate a dry-dock, which is in equally as large a sense for public use and purpose, to subserve the interests of shipping. The following authorities, by strong analogy attest the public character of the enterprise of constructing and operating a dry-dock:

Loan Association v. Topeka, 20 Wall. 655;

Township of Burlington v. Beasley, 94 U. S. 310;

Blair v. Cuming County, 111 U. S. 363.

One other point is made in this relation, which is, that the Board of Control of the Port of Portland is made appointive and self-perpetuating, rather than elective, and that therefore the entire act, with all the amendments, is unconstitutional and nugatory. The Oregon Supreme Court seems to have settled

the question otherwise (David v. Water Committee, *supra*; State v. George, 22 Or. 142; and Eddy v. Kincaid, 28 Or. 537), and I feel bound by the adjudication.

We come now to the question of the jurisdiction of a court of admiralty to take and maintain cognizance of the cause. Is the cause maritime? This depends upon whether the contract set out in the libel, implied though it is, is maritime. We are informed by the libel that, at the instance and request of the owner, and upon the faith and credit of the vessel, libellant lifted the Steamship George W. Elder upon its dry-dock, and furnished dockage therefor for a time specified. It is previously alleged that the Elder is a vessel plying the waters of the United States. The contract, therefore, was one for the dockage of a vessel plying the waters of the United States. It does not specifically appear in the libel whether the Port of Portland is the home port of the steamship Elder, or whether her home port is within the State or District of Oregon, but it seems to be conceded, and I am warranted, therefore, in treating the cause as if such were the case in fact. It is said in *The J. E. Rumbell*, 148 U. S. 1, 11, that:

"In the admiralty and maritime law of the United States, as declared and established by the decisions of this court, the following propositions are no longer doubtful:

"1st. For necessary repairs or supplies furnished to a vessel in a foreign port, a lien is given by the general maritime law, following the civil law, and

may be enforced in admiralty.

"2d. For repairs or supplies in the home port of the vessel, no lien exists, or can be enforced in admiralty, under the general law, independently of local statute. '

"3d. Whenever the statute of a State gives a lien, to be enforced by process in rem against the vessel, for repairs or supplies in her home port, this lien, being similar to the lien arising in a foreign port under the general law, is in the nature of a maritime lien, and therefore, may be enforced in admiralty in the courts of the United States.

"4th. This lien, in the nature of a maritime lien, and to be enforced by process in the nature of admiralty process, is within the exclusive jurisdiction of the courts of the United States, sitting in admiralty."

The same eminent jurist who announced these principles as settling the law in the United States—Mr. Justice Gray—in a still later case (*The Glide*, 167 U. S. 606, 624), sums up the entire jurisdiction, maritime and admiralty, under the Federal Constitution, in the following language:

"A lien upon a ship for repairs or supplies, whether created by the general maritime law of the United States, or by a local statute, is a *jus in re*, a right of property in the vessel, and a maritime lien, to secure the performance of a maritime contract, and therefore may be enforced by admiralty process in rem in the District Courts of the United States."

This seems to comprise the whole law upon the subject as it can have relation to the present contro-

versy. The statute of Oregon, section 5706 B. & C. Comp., provides that:

“Every boat or vessel used in navigating the waters of this state or constructed in this state shall be liable and subject to a lien,—

* * * *

“2. For all debts due to persons by virtue of a contract expressed or implied, with the owners of a boat or vessel * * * * to construct, repair, or launch such boat or vessel, on account of labor done or material furnished by mechanics, tradesmen, or others in the building, repairing, fitting, and furnishing, or equipping such boat or vessel, or on account of stores and supplies furnished for the use thereof, or on account of launch ways constructed for the launching of such boat or vessel;

“3. For all sums due for wharfage, anchorage, or towage of such boat or vessel within this state.”

A maritime contract may extend to repairs made or supplies furnished a vessel while actually employed in shipping, or, in other words, engaged in commerce.

As to the question of jurisdiction, regard is had to two factors only, which are determinative, namely, the purpose for which the craft was constructed, and the business in which it is engaged. When it is alleged that the vessel is plying the waters of the United States, which must be taken as the fact for the purpose of the exceptions, the business in which it is engaged appears to be maritime in character, and therefore the contract was with reference to a ship actually engaged in commerce. So it is that, during

the repair of a vessel, it is often necessary that she be at a wharf, dock, or pier to be most conveniently and safely accessible.

"The pecuniary charge in the nature of rent to which vessels are liable for the use of a dock or wharf is called wharfage or dockage, and is the subject of admiralty jurisdiction."

Benedict's Admiralty, 3 Ed. * 283.

The term "dry-dockage" is employed by the libel, by which I presume is meant given dockage in a dry-dock. The statute alluded to seems broad enough to comprise this kind of service, and the contract being for maritime services with reference to a ship engaged in commerce, there can remain no further question that she is subject to the lien intended to be imposed by the statute, and also that this court of admiralty has jurisdiction in rem to enforce the lien.

Some question was made that, the ship being in a dry-dock, the service was on land; but the contrary is true, as is held by Mr. Justice Brown in *The Robert W. Parsons*, 191 U. S. 17, 33. This case is valuable in its bearings upon other phases of the case at bar.

As it pertains to the authority of the Port of Portland to charge compensation for the service of dockage, I am of the opinion that it is conferred by the general power granted under section 4636 B. & C. Comp.

The court is not at this time concerned with the causes conducing to the necessity for docking the vessel. All it can know is what appears from the libel.

The exceptions will be overruled.

[Endorsed]: Opinion on Exceptions to Libel.
Filed Feb. 24, 1908.

E. D. McKEE,
Clerk U. S. District Court.

And afterwards, to wit, on the 20 day of April, 1908,
there was duly filed in said Court, an Answer, in
words and figures as follows to wit:

[Answer.]

*In the District Court of the United States for the
District of Oregon.*

THE PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc.

To the Honorable Charles E. Wolverton, Judge of
the Above Entitled Court:

The answer of J. H. Peterson and Charles P. Doe,
owners and claimants of the Steamship George W.
Elder, her machinery, tackle, apparel, etc., to the
libel of the Port of Portland against said ship;

And now comes said J. H. Peterson and Charles P.
Doe, owners of said Steamship George W. Elder, and
for answer to the libel of said Port of Portland
against said ship, her machinery, tackel, apparel, etc.,
doth allege and articulately propound as follows:

I.

As to the allegations in paragraph 1 of said libel,

claimants admit that said libellant at all times specified in the libel assumed to operate a sectional floating dry dock within the county of Multnomah and State of Oregon, but claimants are advised and believe that the operation of said dry-dock by libellant is and at all times has been without authority of law, and claimants therefore deny each and all of the statements and allegations in said paragraph I. of said libel contained.

II.

As to paragraph 2 of said libel, claimants deny each and all of the statements and allegations therein contained, except in so far as said statements are not repugnant to the following facts which claimants aver to be just and true, to-wit: that on and for some time prior to the 21st day of January, 1905, a certain Steamship known as the "George W. Elder" was owned by the Oregon Railway & Navigation Company, and was engaged in traffic and commerce between the city of Portland, Oregon, and the city of San Francisco, California; that the Port of Portland, Willamette District, Oregon, was the home Port of said vessel, and she was sailing under a certificate of registration in said Port; that on or about said date said Steamship was wrecked in the Columbia River, so that said Steamship was rendered unfit for navigation, and was required to and did discontinue and abandon her ordinary trips and withdrew from any and all commercial pursuits; that several attempts were made by said owner to raise said ship but said attempts were unsuccessful, and said owner was re-

quired to and did abandon her as a total wreck, and thereupon said owner surrendered the certificate of registration of said vessel for cancellation, and the same was cancelled because said vessel had become and was a total wreck; that at the time of said wreck said vessel was insured against accidents, and thereupon said owner abandoned said hulk and turned the same over to the underwriters, and the underwriters thereafter made attempt to raise the same, which attempts were ineffectual, and thereafter said hulk, together with the machinery, appliances and apparel then therein contained was sold to J. H. Peterson, one of the claimants herein, and thereafter and on or about the 21st day of May, 1906, said J. H. Peterson succeeded in raising said hulk and removed the same to the city of Portland; and thereupon said J. H. Peterson undertook to make certain repairs, alterations and re-equipment to said hulk, so as to constitute a new vessel capable of being registered and engaging in the pursuits of trade and commerce; that thereafter and on or about theday of..... 1906 said J. H. Peterson agreed to sell and transfer to Charles P. Doe, one of the claimants herein, an undivided one-half interest in said hulk; that such new vessel was not completed or registered until after the filing of the libel herein, nor until November 21st, 1906, when she was completed, registered and enrolled at the United States Customs Office in said Port of Portland, and placed in the way of trade and commerce under the same name as said wrecked ship bore; that at all times between said 21st day of Jan-

uary, 1905, and the said 21st day of November, 1906, said hulk was not in any wise or manner engaged in commerce.

III.

As to paragraph 3 of the libel, claimants admit that the libellant lifted said hulk upon the dry-dock which it assumed to operate, and furnished dry-dockage for the same from the 29th day of May, 1906, to the 18th day of September, 1906, and claimants admit that libellant performed some extra labor upon said hulk, the exact amount of which claimants are not at this time able to state, and claimants aver that the reasonable value of said services and of said extra labor and of all services performed by said libellant in connection with said hulk was and is of no greater or larger sum than \$7294.55, which amount claimants have duly paid to said libellant, and claimants deny that said services or any thereof were performed upon the faith and credit of said vessel, and allege and aver that said services were performed upon the personal credit of said J. H. Peterson, and claimants deny that the reasonable value of said services or the schedule rate for the same was the sum of \$10,533.60 or any greater sum than \$7294.55; and claimants deny that in addition thereto said libellant performed 460 hours of extra labor, or any extra labor, upon said vessel upon the faith and credit thereof or otherwise, or that such alleged extra labor was of the reasonable value of 30c per hour, or of any value at all; and claimants deny that in raising, lowering or repairing said alleged vessel, damage was sustained to keel-blocks or

wedges amounting to the further sum of \$94.25, or any sum whatever; and claimants admit that no part of said sums have been paid save and except the payment of the sum of \$7294.55, which payment was made as hereinbefore stated; and claimants deny that there is now due, owing or payable from said alleged vessel or her owner or owners to libellant, a balance of \$4788.00, or any balance or sum whatever; and in this connection claimants aver and allege that during the time that said hulk rested in and upon said dry dock, to-wit:

1906, said libellant carelessly and negligently suffered and permitted the sections of said dry-dock to become and be out of alignment, and said libellant carelessly and negligently suffered the same to remain out of alignment after due and proper notice thereof, whereby said hulk became warped, twisted and hogged and greatly damaged.

IV.

As to paragraph 4 of said libel, claimants deny that under and by virtue of Section 5706 of the Statutes of the State of Oregon as compiled by Charles B. Bellingier and W. W. Cotton, a lien was or is created upon said alleged vessel inforceable in admiralty or otherwise, and claimants allege and aver that said laws do not create or permit a lien for all or any of the alleged services performed by said libellant, and particularly not for the alleged damage to keel-blocks, etc.

V.

And claimants aver and allege that libellant is not

and never was authorized by its alleged charter or by any statute, to levy, assess, or collect any toll against any vessel or hulk of vessel, or against the owners thereof.

VI.

As to paragraph 6 of said libel, claimants deny that any of the matters or things set forth in said libel are within the admiralty or maritime jurisdiction of the United States or of this Honorable Court.

And claimants herein for a further and separate defense to the libel heretofore filed herein, shows:

SECOND DEFENSE.

I.

That on and prior to January 21st, 1905, the Steamship George W. Elder was registered and enrolled in the United States Customs Office in the Port of Portland, Willamette District, Oregon, by the Oregon Railway & Navigation Company, a corporation organized and existing under the laws of the State of Oregon, the owner of said vessel, and said Port of Portland was the home Port of said ship and she was then in commission and engaged in navigation and commerce; that on said date or soon after said ship was wrecked on the Oregon side of the Columbia River in the State of Oregon, and the said owners were compelled to and did abandon said ship and surrender her papers for cancellation, and the same were thereupon cancelled and the said ship was thereupon withdrawn from commission and navigation, being wholly incapable of being navigated or in any wise

or manner engaged in commerce or navigation, and said ship became and was a derelict; and thereupon the underwriters of said derelict took possession of the same and sold the hulk and all machinery, apparel and articles then in said ship formerly used in connection with the navigation thereof, to J. H. Peterson, one of the claimants herein, and the said J. H. Peterson thereupon took possession of said derelict and removed the hulk thereof to the dry-dock referred to in the reply herein and caused the same to be placed on said dry-dock; and thereupon each and all of the alleged work, labor and services and other things set out in the complaint as performed upon said alleged Steamship, was performed upon said hulk.

II.

That during all the time when said alleged work, labor, services and other things referred to in said complaint were rendered and performed, said hulk was not a Steamship or other vessel in any wise or manner engaged in navigation, transportation or commerce, nor did the said J. H. Peterson have in view or mind any commercial engagements for the same until after certain alterations, changes, re-equipment and re-building thereof should have been completed, so as to render the same able to again engage in navigation and commerce.

III.

That at all times herein referred to the said dry-dock was located upon and fastened to the land, and said work, labor and services referred to in the reply

herein were performed upon said hulk while located in said dry dock, being then upon the land, and not upon the high seas or upon any public waters.

WHEREOF claimants pray that libellant take nothing in the above entitled cause; that said libel be dismissed, and that claimants herein have and recover from said libellant costs and disbursements herein incurred, and such other and further relief as may be just and proper in the premises.

C. P. DOE,

By J. H. P.

J. H. PETERSON,

Claimants.

Milton W. Luther,

Proctor for Claimants.

UNITED STATES OF AMERICA,

District of Oregon—ss.

On this 18 day of April, 1908, before me at Portland, Oregon, personally appeared the within named J. H. Peterson and made oath that he had read the foregoing answer and that the same is just and true as he verily believes.

J. H. PETERSON,

Subscribed and sworn to before me this 18 day of April, 1908.

[Notarial Seal.]

M. O'MALLEY,

Notary Public for Oregon.

[Endorsed]: Answer. Filed April 20, 1908.

A. M. CANNON,

Clerk U. S. Dist. Court.

And afterwards, to wit, on Tuesday, the 20 day of April, 1909, the same being the 44 Judicial day of the Regular March, 1909, Term of said Court; Present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

*In the District Court of the United States for the
District of Oregon.*

THE PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc.

Based upon the stipulation of the parties herein it is ordered that this cause be and it is hereby referred to A. W. Person, a notary public for the State of Oregon, as commissioner to take and report all testimony submitted by either the libellant or the claimant, the taking of said testimony to be concluded and said testimony filed in this court by the 1st day of June, 1909.

And afterwards, to wit, on the 22 day of April, 1912, there was duly filed in said Court, an Opinion on the Merits, in words and figures as follows to-wit:

[Opinion.]

No. 4879.

In the District Court of the United States for the

District of Oregon.

PORT OF PORTLAND,

Libellant.

v.

S. S. GEORGE W. ELDER.

WILLIAMS, WOOD & LINTHICUM for Libellant.

MILTON W. SMITH for Claimants.

Libel to recover for services rendered in raising and keeping in dry-dock the Steamship George W. Elder for and while undergoing repairs.

The Elder, while navigating the Columbia River below Portland, and near Goble, ran upon a rock and sank. This was in January, 1905. Her owners surrendered her to the underwriters, who, in turn, being unable to raise her, sold her at auction to J. H. Peterson. Peterson subsequently sold an interest in the vessel to Charles P. Doe. In the meantime her registration papers were surrendered. Peterson succeeded in raising the vessel in the latter part of the spring of 1906, and, Doe becoming interested, she was placed in the Port of Portland dry-dock on Sunday, May 27, 1906, the lifting having been completed on Monday, the 28th, at 5:30 A. M. She remained in dry-dock undergoing repairs until September 18, 1906, when she was released. There was no written contract between the Port of Portland and the owners for placing her in dry-dock, or respecting the charges to be made for the services, or for keeping her in dry-dock for the time necessary for making the repairs. The Port of Portland, however, had

previously issued a schedule of charges for such services, of which the owners of the Elder were cognizant, and the dockage was simply had at the instance of the Elder's owners, without further formalities as to contract or agreement. The injury sustained by the Elder was to her substructure, for the length of 43 to 45 feet. Her keel was bent upward and broken in three places, and her keel-plates were likewise stove in and bent and broken. The center of the rent was 80 feet aft from the stem, and was of such proportions as that the ship, without careful handling, was liable to break in two. The ship when docked occupied three pontoons or sections of the dry-dock, the sections being each 80 feet in length, and separated from each other by a space of two feet, and the vessel's length was 250 feet. The center of the rent in the ship's bottom came directly over the junction of sections one and two, the broken part thereby extending over a part of two pontoons of the dry-dock. The dock is provided with locking-blocks for holding the sections in place.

WOLVERTON, District Judge:

All the questions of legal import except one have been practically determined upon the exceptions to the libel. 159 Fed. 1005. The remaining question now presented is whether the Elder was a vessel within the meaning of the maritime law, rendering her subject to libel in rem for dry-dock charges, although she had been wrecked, abandoned by her owners and underwriters, and her register closed.

Besides this, there is a question of fact to be de-

terminated, which is whether the work of docking the vessel and placing her in alignment suitable to receive her repairs was so negligently and unskillfully done as to delay the contractor in making the repairs and thus add to the time which the ship was required to be held in dry-dock; the claimants claiming that they should have a reduction of the dry-dock charges on that account.

It cannot well be claimed that the Elder in her wrecked condition was not yet a vessel. She was not destroyed as a vessel—she was simply wrecked by a hole being stove in her bottom so that she sank. She was still susceptible of being raised and towed for a number of miles, and placed in a dry-dock, where she received her repairs, and henceforth was a ship ready for navigation. Her model was preserved in every way. Neither did she lose any of her propelling machinery or equipment. In the case of *Hardy et al. v. The Ruggles*, Fed. Cas. No. 6062, the Ruggles, a steam propeller enrolled and owned in New York, while on a voyage to North Carolina, was burned to the water's edge. The hull, with steam machinery and propelling wheel on board, was towed to Smithfield, Virginia, and there rebuilt, the old hull being used, with engine frame and boilers standing; but the length of the vessel was somewhat increased; and it was held that this was an old vessel rebuilt, and not a vessel constructed anew. She did not, therefore lose her identity, but continued to be a foreign vessel, and not a domestic vessel in Virginia. The court, quoting from Molloy, says:

"If a ship be right up in parts, and repaired in parts, and taken asunder in parts, yet she remains the same vessel and not another; nay, though she hath been so often repaired that there remains not one stick of the original fabric."

In the case of *The Progresso*, 46 Fed. 292, the facts were these: The steamer in question, while a British vessel registered under the name of "Wells City," sank in the harbor of New York. She was abandoned by her owner, and her registry as a British vessel closed. Being raised by the underwriters, she was purchased by the claimant, with the purpose of procuring for her a register as a vessel of the United States under the name "Progresso". Certain services were rendered the vessel while afloat in the Atlantic basin, before she had obtained an American register, and the question was urged whether she was a vessel in the maritime sense, and whether the services rendered her were maritime. It was held that the *Progresso* was no less a ship or vessel because she had no national character and was without a name, that she could navigate and would be subject to salvage, and that, while she may not have been entitled to the rights and privileges of a vessel of the United States, she was nevertheless a vessel capable of being employed in commerce as a ship and a subject of maritime service.

The fact that a vessel is not enrolled or licensed does not affect the question of jurisdiction. *The General Cass*, Fed. Cas. 5307. And it makes no difference whether a ship is unfit for sea at the time a

contract is made in her behalf; if the object and effect of it be to enable her to pursue her business upon the sea, it is in its nature maritime. *The Marion S. Harris*, 85 Fed. 798.

True, the *Elder* after her wreck was not a vessel capable of navigation by her own motive power, but she had not been destroyed as a vessel; she was still possessed of her hull, though damaged, and all of her engines, boilers and equipment were aboard of her, so that, save for the damage, she was still a vessel capable of navigation, and the very purpose of placing her in dry-dock was to make suitable repairs so that she might again navigate by her own motive power as she had done before. That her registry was closed for the time being does not, as we have seen, affect the case, and I hold, therefore, that she was a vessel in the maritime sense receiving repairs, and was subject to reasonable dry-dock charges, and to a maritime lien on account of such charges.

As to the question of fact, the evidence shows that the *Elder* was lifted in the dry-dock on Sunday, May 27, 1906, the work being completed at 5:30 Monday morning, May 28th. The *Elder* is charged with First day May 29, 27c per ton (gross tonnage), \$461.70; then for 5 days at 10c per day per ton, aggregating \$855.00; and then for 88 days at 7c per day per ton, aggregating \$10,533.60; the vessel being released from the dry-dock September 18, 1906. Sundays and holidays are excluded from the account. After the ship was put in dry-dock her owners were engaged until June 20th in unloading her damaged

cargo, such as was on board when brought to the dock, and in taking out the cement which had been used in great quantities for the purpose of making her rigid and tight so that she could be pumped out, raised, and towed to a suitable place for making her repairs. The cement was poured in, over and about the rent made in her hull, and about the broken keel and keel-plates, and allowed to harden, so that it became necessary to remove the same before the work of repairing could be entered upon. The libellant had nothing to do with removing the cement and cargo, and the actual work of repair began on June 20th. This appears from the Port of Portland's log, and it is not seriously contradicted.

Mr. Doe describes fairly well the damage sustained by the *Elder*, which is in effect that she was humped up immediately over the place where she struck the rock. The rock being a large one, the ship settled on top of it, and the rock pushed its way up through her bottom, carrying up the keel, frames and plates, stanchions and deck-beams, and everything with it. When she was put in dry-dock and her damaged parts removed, she was in a measure broken in two, or to be more accurate, perhaps, greatly weakened at the point of injury. When she went into dry-dock she was out of line because of her injury, which necessitated putting her into line again, so that her keel might be put in true, and frames, keel-plats and other adjustments properly fitted and made fast and strong.

Now, the principal complaint is that the Port of

Portland, by negligent and unskilful management of the dry-dock, delayed the work to the extent of 14 or 15 days, resulting in a loss by the amount of the dry-dock charges for that length of time.

The controversy may be solved, I think, by what was done as it respects the keel, and the skill and diligence exercised on the part of the Port of Portland in doing the work of lining up the vessel. It seems that it was necessary to readjust the broken portion of the keel accurately and precisely before the further work of repairs could be proceeded with. The molds or templets were to be taken for the other parts of the ship to be put in place after the keel was adjusted and its exact elngth ascertained, as the length of the keel-plates and other adjustments depended on that. The consensus of claimants' witnesses is to the effect that the ship was gotten into proper alignment about July 14th, but went out again on the 16th, and was not satisfactorily realigned until August 18th, and that the loss of time occurred between these dates. The fault is laid to the fact that the injured part of the vessel was placed over the division line of pontoons 1 and 2, and not entirely upon one of the pontoons, thus permitting the pontoons to weave about and wrench the vessel at its weakest point, slightly it is true, but sufficiently to delay the work of fitting in the broken part of the keel and getting the proper molds for other parts to be adjusted in order. The adjustment of the pontoons for the proper alignment of the ship was handled by shifting ballast in the pontoons, and it was by this method that the ship was in the end

brought into satisfactory alignment. The log of the libellant shows that the piece of keel necessary to the repair, which was manufactured by Moran Brothers, at Seattle, Washington, was not received at the dry-dock until August 8th. This was but ten days prior to the ship's alignment to the entire satisfaction of claimants. It seems to have been adjusted readily and at once, its proper and exact length ascertained, and the work of making the molds or templets for fitting and adjusting the other parts necessary for making the repairs proceeded with. Mr. Albert Kelly, who was in charge of the work of repairing the Elder for the Portland Steel Ship Building Company, which company had the contract for making such repairs, says the keel arrived somewhere "around about the 6th or 8th of August," and that the keel-plates came along with the keel. So there is practically no conflict in the testimony as to the time the keel arrived; and the keel-plates arrived along with it. Kelly further says, in point of fact, he got his keel in early in August, about the 1st or 2nd. In this, however, he must be mistaken, for he could not have put it in before it arrived at the dock from the manufacturer. He further testifies, however, that he could not get the keel in until he got the scarphs in the old keel, and that he had to wait until he got the ship in proper line before he could get the proper length in order to do that, and that he was not very much inconvenienced by the fact that the vessel was not in line up to the time the keel arrived, "probably about four or five days." These four or five days

added to the ten days between the 8th and the 18th would make up, excluding Sundays, about the time that claimants contend was lost by delays in lining up the vessel. And referring again to the Port of Portland's log, it shows that the keel and stem, not only arrived on the 8th day of August, but were put in place. Kelly says that it was only the work of an hour to make the pattern for the keel, that is, to take the length of such pattern, the keel being all ready to put in place when it came, except that it was required to be adjusted as to length, when the ship was once in line. The pattern had to be taken before the keel could be cut the proper length. But it appears that the keel was put in place on the 8th of August, so that the pattern must have been taken prior to that time, and to do that, the ship must have been in line. The claimants' testimony is not exact as to the time the keel was put in, and it does not specifically refute the testimony that the keel was put in place on the 8th of August.

Frank Walker, who drew up the specifications for and supervised the repairs, testifies that "it was absolutely necessary to have the ship's keel in perfect line before any of the molds or templets could be made to the new part of the keel, keel-plates, shell plates, frames, stringers, keelsons, etc." But on cross-examination he was asked, "So it took them from the 16th of July until the 18th day of August, at which first date they found they could not hold the dock in line with water (ballast)—it took them that length of time in which to get the dock in line by the shifting

and adjusting of the ballast?" To which he replied: "They got the dock into line, or practically into line, in a few days after the 16th; but it was the 18th of August before they had her in perfect line." It is not improbable, therefore, that the molds or templets were made prior to August 8th, and the keel put in on that date, as the libellant's log shows. But beyond this, Walker says that he had no criticism concerning what they did from the 16th of July to the 18th of August in getting the dock in line, and that "they did the right thing after the 16th of July, after they found they could not hold the dock there with water they did the right thing." In this relation he further testified: "Q. Well, did they pursue their work with diligence? A. They fairly well succeeded. Q. And with dilligence- A. And with diligence."

It is admitted that the dock was a good one of its kind, and it must be further conceded, under the testimony, that the vessel, owing to its badly wrecked condition, was very difficult to put into true alignment. It is probable that this feature attending the repairs had more to do with hindering the work than any unskilful or dilatory management of the dry-dock, and it is not proven that the particular manner in which the ship was placed in the dry-dock had anything to do with the delay. Considering all the testimony, I am of the opinion that libelant is not chargeable with the delay complained of by claimants, or any part of it.

I have further examined the testimony touching

the smaller items of charge, also contested, and am impressed that they should be allowed.

The decree will be that the libellant recover against the Steamship Elder the sum of \$4788.00, together with interest at 6 per cent. per annum from September 18, 1906.

[Endorsed]: Opinion. Filed Apr. 22, 1912.

A. M. CANNON,
Clerk U. S. Dist. Court.

And afterwards, to wit, on the 15 day of May, 1912, there was duly filed in said Court, a Final Decree in words and figures as follows to wit:

[Decree.]

*In the District Court of the United States for the
District of Oregon.*

PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc.

This cause was heard upon the pleadings and proofs introduced by the respective parties hereto, and argued by Mr. C. E. S. Wood, of proctors for the libellant, and Mr. Milton W. Smith, proctor for the claimant, and the court being now fully advised in the premises finds as follows:

1. That on the 29th day of May, 1906, libellant was and still is a corporation created by and existing under certain acts of the legislative assembly of the

State of Oregon, with power, inter alia, to operate a dry-dock.

2. That prior to the 29th day of May, 1906, the Steamship, George W. Elder, a vessel of the gross tonnage of 1710 tons, plying the waters of the United States, sank in the Columbia River.

3. That on the 27th day of May, 1906, at the request of J. H. Peterson, her owner, and relying upon the faith and credit of said vessel, the libelant lifted said vessel upon its floating dry-dock at Portland, Oregon and furnished dry-dockage for said vessel from the 29th day of May, 1906 to the 18th day of September, 1906.

4. That under and by virtue of Sec. 5706 of the statutes of Oregon, as compiled by Charles B. Beltinger and W. W. Cotton, a lien arose against said vessel in favor of the libelant for dry-dockage services rendered upon the faith and credit of the vessel.

5. That said George W. Elder, though wrecked, abandoned to the underwriters and her register closed, was, at the time when such services were rendered, a vessel in the maritime sense, and subject to reasonable dry-dock charges and to a maritime lien on account of such charges.

6. That no delay in the repair of the vessel was caused by the negligence or unskilfulness of the libelant.

7. That the reasonable and agreed value of the services rendered by the libelant to the George W.

Elder were:

Dry-Dockage.

May 29th, 1 day 27 cents per ton gross	\$ 461.70
May 29th, 5 days, 10 cents per ton per day	855.00
May 29th, 88 days, 7 cents per ton per day.....	\$10,533.00

Labor.

460 hours at 30 cents per hour	\$ 138.00
Keel blocks and wedges injured, or destroyed	94.25

Total amount earned	\$12,082.55
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Paid on account	7,294.55
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Amount due	\$ 4,788.00
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Wherefor it is ordered, adjudged and decreed that said libelant do have and recover against the steamship, George W. Elder, the sum of \$4788.00 with interest at 6 per cent per annum from September 18th, 1906, together with costs and disbursements herein incurred, and that if said sum be not paid with in 30 days from this date execution shall issue therefor.

CHAS. E. WOLVERTON.

May 15, 1912.

District Judge.

[Endorsed]: Final Decree. Filed May 15, 1912.

A. M. CANNON,

Clerk U. S. Dist. Court.

And afterwards, to wit, on the 2 day of May, 1911, there was duly filed in said Court, Testimony in words and figures as follows to wit:

In the District Court of the United States for the

District of Oregon.

PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc.

TESTIMONY taken before A. W. Person, as Commissioner by virtue of an order of reference, made in pursuance of a stipulation between Proctors for the Libellant and Claimant in the above case, beginning on Tuesday, May 18th, 1909, at 10 o'clock A. M., and ending on Thursday, July 1st, 1909; there being present at the taking of said testimony Mr. J. C. Flanders, Proctor for Libellant, and Mr. Milton W. Smith, Proctor for Claimant.

A. L. PEASE was the first witness produced on behalf of Libellant, and, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, said witness testified as follows:

Direct Examination.

By Mr. FLANDERS:

Q. Captain Pease, what position, if any, did you hold in the year 1906 with the Port of Portland?

A. I was President of the Port of Portland.

Q. You were a member of the commission, besides being president, were you?

A. Yes sir.

Q. When were you elected president of the Commission?

A. March 8th, 1906.

Q. State whether or not you continued as pres-

ident of the commission from March 8th, 1906, for the remainder of that year?

A. Yes.

Q. Were you president of the commission at the time that the George W. Elder was dry-docked at the dry-dock of the Commission?

A. Yes, sir.

Q. Did you visit the ship?

A. Yes, I went down to the dock while she was on and before she was put on.

Q. Did you have any conversation, to your recollection now, with Mr. J. H. Peterson about the placing of the Elder upon the dock, or the rates to be charged?

A. I don't remember of having any conversation with him in regard to the rates for placing the vessel on there.

Q. To whom did the Port of Portland look for the payment of its dry dock charges?

A. They looked to the vessel.

Q. That is, to the Elder?

A. To the Elder, yes, sir.

Q. Upon the faith and credit of what were the services in dry dockage rendered by the Port of Portland, as far as the George W. Elder was concerned?

A. Well, upon the value of the vessel, the Elder.

Q. Did you know Mr. Peterson?

A. I knew him by sight.

Q. Do you know anything whatever about his financial condition?

A. No, sir.

Q. You may state what is the character of the dry dock of the Port of Portland, upon which the Elder was docked?

A. It is a floating, sectional dock.

Q. You may state whether or not the dry dock is afloat at all times, when a vessel is upon it?

A. Yes, sir.

Q. Afloat at all times, is it, when a vessel is not on it?

A. Yes.

Q. How was it held in its position?

A. Well, it has a dock around it.

Q. Held by lines to the dock, is it?

A. Well, it is held by guys and timbers.

Q. It rises and falls, does it, with the rise and fall of the river?

A. Yes.

Q. And it is located where?

A. It is located near St. Johns on the Willamette River.

Q. In Multnomah County, Oregon?

A. Yes, sir.

Q. Do you know what was done with the machinery of the George W. Elder at the time she was on the dry dock?

A. Well, the machinery was in the vessel.

Q. State whether or not she left the dry dock with the same boilers and engines and machinery as she had when she was lifted upon the dock?

A. She did, to the best of my recollection.

Cross-Examination was waived.

(Witness excused.)

ROBERT McINTOSH was next produced as a witness on behalf of Libellant, and, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, said witness testified as follows:

Direct Examination.

By Mr. J. C. FLANDERS:

Q. What is your occupation, Mr. McIntosh?

A. Superintendent of the Port of Portland dry dock.

Q. You have been its Superintendent for how long?

A. Ever since it started; it is five years and three months from the time it started until now.

Q. You have had continuous charge of the dry dock?

A. Yes, sir.

Q. Were you in charge of the dry dock at the time the Elder was lifted and during the time that she was on the dry dock in the year 1906?

A. Yes, sir.

Q. How often did you visit the dock?

A. Every day.

Q. You may state whether or not before the Elder was lifted you had any conversation with Mr. J. H. Peterson regarding the rates for dry dockage?

A. I had several conversations with him at different times, and gave him the the schedule of prices and everything of that kind, and that was all I ever spoke about it.

Q. What kind of a schedule was it you gave him?

A. A book just like that you have (referring to book which proctor for Libellant held in his hand.)

Q. You may state whether or not the book which you gave him is similar to the book which I hand you?

A. Exactly similar to this; it was a book just like that.

Whereupon Proctor for Libellant offered in evidence pages 1 to 7 inclusive of said book, and requested that the same be set out in the record in full, which is accordingly done, and the same is as follows:

“RULES, REGULATIONS AND RATES OF
DOCKAGE OF THE PORT OF PORT-
LAND SECTIONAL DRY DOCK

“1. All vessels requiring the use of the dock or wharves must furnish men to handle the vessel and warp the vessel into and out of the dock, also furnish all hauling lines and lines to steady the vessel while being docked.

“2. All vessels using the dock or wharves must at all times keep the same clear of all dirt and rubbish and thoroughly clean, and sweep the dock before the vessel is floated.

“3. Sufficient stage planks, spauls, and trestles to go around vessels while on the dock will be furnished by the dock on application to the Superintendent. Vessels will be required to furnish all ropes for hanging stages. No ropes or chain of any kind will be furnished by the dock. Vessels or Contractors may bring their own staging to the dock, but must remove same upon completion of work, from dock

and wharves.

"4. All water closets and urinals in vessels shall be locked up or fastened securely, and not used while the vessel is in the dock, under a penalty of fifty dollars (\$50.00) for any infraction of this rule. In the event of any infraction of this rule both the vessel and owners shall be liable for said penalty, and the same shall be included in, and form a part of the charges against the vessel and owners for the use of said dock.

"5. All vessels while using the wharves or dock, shall furnish and display lights during the night time, at each end of all gangways in use.

"6. All vessels lying at the wharves of the dry dock shall move at any time they may be requested by the Superintendent or any person authorized by the Superintendent.

"7. Vessels to be docked MUST BE PUT ON EVEN KEEL abeam, and as nearly as possible on even keel for and aft. THIS RULE IS IMPERATIVE, AND VESSELS WILL NOT BE DOCKED UNLESS IT IS COMPLIED WITH.

"8. Lockers will be furnished by the dock for the storage of tools and the mixing of paints and the keeping of same while vessels are in the dock or at the wharves. But no kerosene, turpentine, naptha, gasoline or other inflammable materials, in quantity of more than five gallons, will be allowed to remain in lockers or on the dock or wharves over night. A duplicate key to each locker so in use will be given to an officer of the vessel or other person author-

ized to act for same.

"9. All staging and other gear of all kinds shall be put away and secured where ordered, before vessels are floated.

"10. Any vessel desiring to work in the night time must give notice in writing before 3 P. M. of the day preceding the night during which it is desired to work.

"11. Vessels desiring to lie at the wharves of the dock to complete repairs, or for any other purpose, may be permitted to do so if the wharves are not otherwise occupied, upon making application in writing to the Superintendent and paying the proper charge, BUT MUST COMPLY WITH FOREGOING RULE NO. 6.

"12. Vessels lying at the wharves or in the dock are strictly prohibited from dumping ashes or rubbish of any kind on or about the same.

"13. Electric wires must not be interfered with under any circumstances.

"14. Keel blocks, bilge blocks or shores must not be removed except by persons authorized by the Superintendent to supervise same and at the expense of Contractors.

"15. Any damage to the dock or wharves, or property connected therewith, caused by negligence or failure to comply with any of these rules, will be charged to the vessel.

"16. Any person employed on or about any vessel who shall fail or neglect to observe these rules or the orders of the Superintendent, or shall use profane or

indecent language, or otherwise render himself obnoxious, shall be immediately discharged, and shall not again be allowed upon such vessel while in the dock at the wharves of the Port of Portland.

"17. Vessels in dock during legal holidays or Sunday, shall not be charged dock rates, unless work is actually being performed on same, in connection with repairs; cleaning, scraping, scaling, or painting included.

"18. Scows shall vacate the dock upon the order of the Superintendent whenever the dock is required for more profitable or urgent work, said scow to be re-docked without expense to owner except for lay days as provided by tariff covering same.

"19. These rules and regulations are subject to change at the pleasure of The Port of Portland, without notice.

THE PORT OF PORTLAND DRY DOCK, PORTLAND,
OREGON

Facilities for Docking the Largest Merchant Marine Vessels Afloat.
DIMENSIONS OF DOCK.

Length	468 feet
Width between Wings	82 feet
Depth of Water Over Keel Blocks	25 feet
Lifting Capacity, Tons Dead Weight	10,000
Will handle Vessels 500 Feet Long.	

RATES OF DOCKAGE.

Steam Vessels on Gross Tonnage.

First Day.	Lay Days.	Minimum \$30.00.
From 100 to 3000 tons....	27c per ton, 10c up to 5 days, After 5 days 7c	
From 3000 to 4000 tons..	22c per ton, 10c up to 5 days, After 5 days 7c	
Over 4000	18c per ton, 10c up to 5 days, After 5 days 7c	

Sailing Vessels on Net Register Tonnage.

First Day.	Lay Days.	Minimum \$30.00.
From 120 to 600 tons.....	22c per ton, 10c up to 5 days, After 5 days 7c	

From 600 to 750 tons.....20c per ton, 10c up to 5 days, After 5 days 7c
 Over 75018c per ton, 10c up to 5 days, After 5 days 7c

Scows of 140 feet deck measurement and under, \$30 for the first day, and \$10 per day for each succeeding day.

Steam Vessels of less than 100 tons, the minimum charge of \$30 for the first day, and \$10 per day for each succeeding day.

Cargo charged for at the same rate as tonnage. No charge for ballast.

Vessels docked for painting and cleaning only will be allowed following lay days:

Vessels of from 1000 to 2000 tons.....1 lay day free
 Vessels of from 2000 to 3000 tons.....2 lay days free
 Vessels over 3000 tons3 lay days free

Wrecked vessels subject to additional charges.

Twenty-four hours constitutes a day. Time to begin when dock is out of water.

For further information apply at office of the Port of Portland.

By THE PORT OF PORTLAND COMMISSION.

Portland, Oregon, From and After August 15, 1905.

Q. Now you gave Mr. Peterson a book similar to that before the Elder was put upon the dock?

A. Yes, sir, before the Elder was put upon the dock.

Q. What did he say as to the rates then?

A. I don't think he looked in it at all.

Q. Were the rates as shown in that book the published rates of the Commission?

A. They were the very same, exactly the same as that.

Q. Mr. McIntosh, you may state when the Elder was lifted upon the dry dock?

A. She was lifted on Sunday, May 28th, 1906, and finished lifting on Monday, May 29th, 1906, at 5:30 A. M.

Q. And she was unlifted from the dock when?

A. Floated, you mean?

Q. Floated, yes.

A. On Tuesday, September 18th, 1906, at 9:30 A. M.

Q. Now, when the Elder was brought to the dock and lifted on the dock, what was her condition?

A. She was in a sinking condition, kept floating by pumping, and grounded at the lower end of the dock the night she arrived and kept there until Sunday morning with a barge alongside to keep her upright, to keep her from listing over,—with a heavy list to starboard.

Q. Was she listed with the barge?

A. No, sir, she could not be lifted with the barge alongside, because the barge was too wide for to admit the ship to come in the center of the dock over the keel blocks. She was brought into the dock with the barge alongside, then the barge was removed and the ship was centered and placed on the keel blocks at 6 P. M. on Sunday evening.

Q. Then you pumped out the dock, did you?

A. Kept the ship at thirteen foot all night for safety and to keep her in good position and good shape until daylight came.

Q. When you say you kept the ship at thirteen feet, that is, you mean that there was thirteen feet of water—

A. In the dock.

Q. Over the keel block?

A. Over the keel blocks. And she was on seventeen feet six when she came into the dock; so they

actually had her down four feet six, you see.

Q. Then Monday morning—

A. We pumped her dry.

Q. You mean you pumped the dock dry?

A. Yes, pumped the dock dry.

Q. Now, was the docking of the vessel difficult, or not?

A. Difficult.

Q. Why?

A. Because the ship was out of shape; she was out of line. Her keel was eighteen inches out from being straight. From her forward part for about eight feet she was out of line. There was a hole in her bottom. The keel was bent up. From the bottom of the keel to the top of the break was about eight feet extending for about twenty-five feet, I think. There was a hole in the ship's bottom. It was difficult to dock her. We had to rig extra blocks to take in the broken part of the ship.

Q. Did you undergo extra expense in the raising of the vessel as to men and hours?

A. Yes, sir.

Q. How much did that come to?

A. There was three hundred hours extra labor docking the ship, fifteen men twenty hours each, from 7 A. M. Sunday morning until 5 P. M. Monday evening, extra labor. The actual labor to dock a ship like that, if it had not been a wrecked vessel, would have been about four hours, and we had twenty-four hours' labor on it with fifteen men. I have allowed the time it would actually cost to dock the ship, and charged

twenty hours extra for each man.

Q. That is, it took you twenty hours' labor of fifteen men more to dock the Elder on account of her damaged condition, than it would have taken you to have docked a similar vessel had her bottom been in shape?

A. Yes, sir, that is exactly right.

Q. And your charge is at the rate of thirty cents an hour?

A. Thirty cents per hour.

Q. And that was the regular charge at that time?

A. The regular charge at that time.

Q. And reasonable, or not, was it?

A. Very reasonable, extraordinary reasonable—too reasonable, if that is any better.

Q. Now, when did the work of the repairs to the Elder commence?

A. The actual repairs commenced on the Elder on June 20th, at one P. M.

Q. What was done on the Elder between the time she was lifted on the dock the 28th of May, up to the 20th of June?

A. There was a gang of laborers working, moving the cement that had been put in the ship and the cargo that had been left in the ship, and others cleaning up the engines and engine room and cabins.

Q. The Port of Portland had nothing to do with this, did they?

A. Nothing to do with it in the world, no, sir.

Q. And the actual work of repairs, you say, began on—

A. On June 20th.

Q. And the repairs were completed as far as the ship being on the dry dock was concerned, when?

A. As far as the dry dock was concerned, on September 17th; she was floated on September 18th.

Q. Why was she not floated on the 17th?

A. She was floated on the 18th, to be careful. I think they did some night work on the 17th, if I remember right. They didn't want to float her because they didn't know whether she would float, or not.

Q. Why?

A. Well, there was always a reasonable doubt in repairs of that kind, that there would be leaks develop when the ship goes in the water, and you naturally wouldn't do that,—float a ship in the night time,—in case we would have to pump her up again. But this ship was practically tight when we floated her.

Q. You floated her at what time?

A. 9 A. M. September 18th.

Q. There was no delay in the floating of her, as far as the dry dock was concerned?

A. No, sir. She was floated when we was told to float her. I was told to float her at that time, and floated her then.

Q. Told by whom?

A. Mr. Walker.

Q. Who was Mr. Walker?

A. He was superintending the work for the owner of the ship, representing the ship.

Q. Now, during the time that she was on the dry dock, were the repairs on her in any way delayed

through the fault of the dock?

A. None; never.

Q. Did you have any talks with Mr. Peterson while she was on the dock?

A. Frequently.

Q. Relative to hurrying along the work?

A. Very often, yes.

Q. What did you tell him?

A. Before they started the actual repairs in the ship I spoke to him nearly every day, every evening, or any time he was down to the dock, why didn't he get to work and get the repairs done on the ship, the dock dues were running up and would be pretty high if it wasn't got started. He always told me he knew what he was doing himself.

Q. After the actual repairs started, did you have any talk with him then?

A. Not about the expense. I never spoke any more to him about it. Yes, I did, too. I spoke to him about it. He told me his dock dues, as far as he was concerned, ceased at a certain time, and then the contractor had to pay the dock dues after that, after so many days; I don't know how many days that was.

Q. It is charged in paragraph three of the Answer to the Libel that the libellant, which is the Port of Portland, "carelessly and negligently suffered and permitted the sections of said drydock to become and be out of alignment, and said libellant carelessly and negligently suffered the same to remain out of alignment after due and proper notice thereof, whereby

said hulk became warped, twisted and hogged, and greatly damaged;" what are the facts concerning this charge?

A. The facts are that it is not so. The dock was always kept to the shape of the ship, at all times, and frequently we adjusted the dock to suit the work as it was going along.

Q. That is, the ship was twisted, was she?

A. The ship was twisted herself, when she came on the dock, and she went off the dock in as straight a form as the contractor could put her.

Q. Well now, while the ship remained twisted, what was it necessary for you to do in reference to the dock itself?

A. By elevating or lowering the pontoons at one end or the other, we could bring the ship by very slow degrees to a normal shape, by straightlining her keel, having her keel straight. The twist had nothing to do—that is, the ship was twisted before she came in the dock and is twisted now.

Q. And this raising and lowering of the different sections of the dock was for the purpose of bringing the ship—

A. Bringing the ship into proper shape.

Q. Did you ever have any warning or notice from Mr. Peterson, or the contractor, or the superintendent, or anybody acting for Mr. Peterson about the dock being out of shape, or that the ship was becoming warped or twisted, or hogged, or greatly or at all damaged?

A. Never.

Q. Through the fault of the dock?

A. Never had any complaint. Never was told by anyone connected with the ship, or the repairs of the ship at any time that the ship was out of shape.

Q. Did Mr. Peterson make any complaint to you during any of the time that the ship was on the dock?

A. No, sir.

Q. About the handling of the ship on the dock?

A. No, sir.

Q. What, if anything, did Mr. Peterson do to you personally?

A. He complimented me very highly on docking the ship the way she was docked; said it was a first class job, and made me a present of a diamond pin.

Q. When was the present of that diamond pin made?

A. In July, on my birthday, I think it was.

Q. While the ship was on the dock?

A. Yes, sir.

Q. Who had charge of the running and management of the dock during the time the Elder was there?

A. Myself and the foreman when I was absent.

Q. You may state the character of the Port of Portland dry dock?

A. The Port of Portland dry dock is a floating dock in five sections. Each section is eighty feet long, and one hundred and twelve feet wide. The George W. Elder occupied three full sections, and a part of the apron while on the dock.

Q. Is the dock always afloat?

A. Always afloat.

Q. And was always afloat when the Elder was upon it?

A. Yes, sir.

Q. And is it kept in position how?

A. Kept in position by timbers fastened to the sides of the pontoons, and runs and guys fastened to the wharf,—slips up and down as the river rises and falls.

Q. Held in a slip?

A. Yes, held in with a pier on each side, slip on each side; a pier or wharf on each side. There are no lines or attachments at all connected to the dock to hold it in place; it is held there by the guys.

Q. And the services for which the Port of Portland sues are for what, Mr. McIntosh?

A. I do not know.

Q. You don't know what the services are for?

A. Oh, the Port of Portland?

Q. Yes.

A. They sue for the dock dues and the extra labor for docking a wrecked vessel.

Q. You had nothing to do with the repairs?

A. Nothing whatever.

Q. Or the getting of the ship in shape for the repairs to be made?

A. No, sir.

Q. Just simply for the lifting and floating of the vessel and for the use of the dock while she was on the dock?

A. That is all.

Q. And your charges were the schedule charges?

A. The regular schedule charges, as then in force.

Q. As then in force?

A. Yes.

Q. Upon the faith and credit of whom was this dockage furnished the George W. Elder?

A. On the vessel's.

Q. Did you know anything about Mr. Peterson's financial responsibility?

A. No, sir.

Q. You looked to what?

A. Looked to the vessel and her value.

Q. And not—

A. The vessel and the machinery and power and everything connected with the ship.

Q. You may state what was done on the ship while she was on the dry dock, in the shape of repairs, if any, to the machinery?

A. Why, the machinery was all cleaned out thoroughly and relined up, refitted; whatever pipes were broken were refitted and all put in first class shape. That is all I know about the machinery.

Q. She left the dock with the same machinery she had when she went on?

A. Yes, sir.

Q. The same engine?

A. The same engine, the same propeller.

Q. The same boiler?

A. The same boiler.

Q. Same shaft?

A. Same shaft.

Q. Her machinery was simply cleaned, overhauled?

A. Cleaned and overhauled.

Q. And any broken parts replaced?

A. Yes.

Q. What was done with her hull?

A. The hull was—let's see, what length was that piece of keel? There was forty feet of new keel put in her and about twenty-five feet of new stem, and I suppose there was fifteen new frames or more; this is only from memory I am giving now about the frames.

Q. Yes.

A. And probably twenty-five new plates put in her where she was damaged and a new piece of bilge keel and some new beams, oil tanks.

Q. She did not have oil tanks before?

A. No, she had no oil tanks before. Now, of course I am just giving from memory about that. I know about those forty feet of new keel and twenty-five new stem, and about twenty-five plates in the after part and three or four plates there by the stem under the fore foot.

Q. Did she retain the same shape and the same model she had when she came on the dock other than the fact that she was twisted somewhat?

A. The after end of the ship was twisted when she came on the dock and she went off the same way.

Q. She was not dismantled, dismembered at all?

A. No, no. What we done was to straighten up her keel, her keel line; to take the twist out of her we

did nothing, we couldn't take the twist out of her.

Q. That was the twist in the after part of the ship?

A. That was the twist in the after part, yes.

Q. Now, it is alleged in the libel, Mr. McIntosh, that in the raising and lowering and repairing, damage was sustained to keel blocks and wedges amounting to the sum of \$94.25; you may state how that came about.

A. It came about from the broken keel cutting into the keel blocks and the vessel being so much out of shape, it made the bilge blocks so that they had to be split out and destroyed and new ones put in their place.

Q. And this charge of \$94.25 is for what?

A. Is for the labor putting the blocks back in their place and the value of the blocks and the value of the wedges supplied.

Q. That is the new ones?

A. The new blocks.

Q. And when you say value, you mean what,—cost or what?

A. The actual cost of the blocks.

Q. To the Port of Portland?

A. To the Port of Portland.

Q. And labor in putting it in shape?

A. And labor in putting it in shape.

Q. And that labor was how much an hour?

A. Thirty cents.

Q. That was the rate at that time?

A. At that time.

Q. Now, Mr. McIntosh, in addition to the twenty hours extra time of fifteen men on May 27th, 1906, to which you have already testified, you may state whether or not there was any other extra or overtime incurred in the docking of the ship than that, over and above what you would have incurred had the ship not been in the condition she was.

A. On May 26th, we had to prepare extra blocks and cribs placed under the bilge of the vessel to be filled in after the vessel was on the keel blocks. It would not have been necessary, if the vessel had not been in a wrecked condition.

Q. That was how many hours of time?

A. Fifty-four hours.

Q. That was on what day?

A. On the 26th.

Q. And you charge how much an hour for that?

A. Thirty cents.

Q. That was the regular charge at that time?

A. The regular charge. Well, then, on May 28th, from five A. M. to five P. M., to block the vessel up solidly and put her in good shape there was 104 hours extra labor.

Q. At how much per hour?

A. At thirty cents per hour.

Q. That was the usual charge?

A. The usual charge.

Q. Now, would any of this labor, to which you have testified, have been necessary but for what you call the wrecked condition of the Elder?

A. None of it would have been necessary at all.

Q. And the cost of the blocks which you replaced was how much?

A. \$42.24.

Q. And the labor in getting the blocks in shape was how much?

A. \$161.30.

Q. At thirty cents an hour?

A. Yes, sir.

Q. That was after the ship was on the dock?

A. That was after the ship was on the dock.

Cross-Examined.

By Mr. M. W. SMITH.

Q. What business were you in, Mr. McIntosh, before you were employed by the Dry Dock Company?

A. I was contracting and repairing ships, heaving them down, when we didn't have any dry dock.

Q. How long were you in that business?

A. From 1879.

Q. And what business were you in before that?

A. Ship carpenter.

Q. Where?

A. Right here in Portland and Oregon City, The Dalles, Astoria.

Q. How long have you been in that business here? How long have you been in Oregon?

A. Since 1876, November.

Q. Did you ever have anything to do with a dry dock before?

A. Yes, sir.

Q. Where?

A. In Scotland.

Q. How long ago was that?

A. That was from 1869 to 1874, during my apprenticeship.

Q. What kind of a dock did you have there?

A. Floating dock.

Q. The same as this one?

A. No, not the same as this one; it was all one piece. One piece of this one would be similar to that dock.

Q. Then it was a small dock?

A. It was a dock capable of docking vessels of seven or eight hundred tons.

Q. How large was the Elder?

A. The Elder was, I think, seventeen hundred gross.

Mr. FLANDERS: 1710 gross.

Mr. SMITH: Yes, 1710.

Q. Then you never had any experience on a sectional dry dock the same as this, until you were employed here?

A. No, sir.

Q. And how long had you been employed here before the Elder was put on?

A. What year was I employed; 1904.

Q. The Elder was put on in 1906?

A. 1906. I was employed and the first vessel we docked in the dry dock was April 25th, 1904—two years and some months, I guess.

Q. Now, had you ever docked a vessel in the condition that the Elder was in, before?

A. No, nor nobody else.

Q. Did you ever dock a vessel that was wrecked or injured before?

A. On this dock?

Q. Yes.

A. Let me think, now. Let me see what we had before that. I can't recollect. We have had several vessels with damaged hulls, and like that, before that; but nothing like the Elder; that is an exceptional case in the world.

Q. Now, what was the condition of the Elder when she was brought to you?

A. The condition?

Q. Yes.

A. In what respect do you mean?

Q. As to her keel and shape; what shape was she in?

A. Why, she was afloat.

Q. She was afloat?

A. I say, I could not tell you that, she was afloat.

Q. Oh, you could not?

A. No, sir. You mean the shape she was laying in, or anything of that kind?

Q. No; the shape of the ship, whether she was out of shape or whether her keel was straight or whether it was crooked?

A. Nobody could tell that. I could tell that only from the reports. The reports given to me by the divers said she was broken.

Q. I mean when she got on the dock?

A. When she got on the dock?

Q. Yes.

A. When I could see her bottom?

Q. Yes.

A. Oh well, there was a hole in her bottom extending for about fifty feet.

Q. Fifty feet?

A. In length, and eight feet in depth, up this way (indicating perpendicularly),—a regular arch.

Q. Whereabouts was this hole?

A. That was about eighty feet from the stem.

Q. And how long a ship was she?

A. Two hundred and fifty feet.

Q. About eighty feet from the stem?

A. Yes, sir.

Q. Beginning eighty feet from the stem and running back fifty feet?

A. Not beginning eighty feet from the stem; the center of the hole was eighty feet from the stem.

Q. Oh, I see. Now, what was the condition of her keel, what shape was she there?

A. The keel was bent up, as I told you, eight feet, broken in three places.

Q. This hole went clear to the bottom, did it?

A. It started, and the keel went right up.

Q. Oh, I see. Then there was a dent in the keel, if I may put it that way?

A. Well, the keel was made into a regular arch. It was bent up in that shape; it formed an arch and the plates and frame went right up with it, breaking the beams off at the same time.

Q. Then, apparently, she struck the rock—

A. (Interrupting). Her fore foot, that is, the

very first part of the ship,—her keel struck on the rock first and bent that over and broke three or four plates there; then she bounded—this is only a supposition.

Q. Yes.

A. She lifted up and landed eighty feet from the stem on to the top of the rock. That is a supposition only.

Q. Now, was the keel broken?

A. Keel broken?

Q. Yes.

A. And bent up eight feet? Why, yes, she was broken in three places.

Q. Three pieces?

A. Three places. Still it was all inside, mind you; the plates were still holding it together, and the frames were on. It all went up and bent together. You see, it was eight feet from the top of the keel to the bottom of the plate.

Q. Then it was as if something had struck the keel and bent it up in that shape, was it?

A. Yes. If you will give me a hat, I will show you.

Q. Now, were those plates knocked off where the hole was made? Were they intact, or were they there?

A. They were still laying to the frames, all broken and shattered to pieces, with holes in them.

Q. How about being straight or otherwise? Was she straight, or was she—I mean, laterally? Was she straight or not?

A. Longitudinally?

Q. Yes.

A. She was straight from the stem post to—two hundred feet of the keel was straight; at least two hundred and fifty feet of the keel was straight, then the break commenced there and went up eight feet for thirty feet; then the balance of the keel was straight from the broken part to the fore foot.

Q. That is from the bottom of the ship up now over the sides; how was she that way, from one side to the other?

A. On the starboard side she was broken up, right up to the seventeen foot water line, I think. On her port side she was broken up to the turn of the bilge.

Q. Then how was she when she was placed on the dock? How was she placed as regards this hole?

A. She was placed on the keel blocks the same as any other ship.

Q. I know, but on these sectional docks where was the ship placed; was the hole all on one section?

A. The hole was between two sections, between number one and number two. We call number one the upper end of the dock—between two sections.

Q. Now, how long are those sections; how wide, I mean?

A. The length of them?

Q. Yes.

A. Fore and aft, they are eighty feet apiece and two feet apart.

Q. Now, it would have been possible, wouldn't it, to have put that vessel so that the hole, where she was

broken, would have been all on one section, wouldn't it?

A. It would have been very bad to put the ship that way; it would have broke her completely in two.

Q. Why do you think it would have broken her in two?

A. Because it would have taken hold of the extreme forward end, on the end of the hole, the after end, and consequently straightened the ship up and broke her right where she was broken already.

Q. Now, these sections are eighty feet and the hole was fifty; there would have been fifteen feet on each end of the hole that would have been on the one section?

A. Fifteen feet? There would be a little more than that. She was a little more forward on the pontoon on number one than number two.

Q. What I am getting at is this: If you had put this vessel so that the broken part would have all been on one section, it would have covered the hole and fifteen feet on each end, wouldn't it?

A. No, sir.

Q. Then you put her so the hole was on two sections?

A. The center of the hole was eighty feet from the stem; now the pontoon was eighty feet long; where would the center than come to on an eighty foot pontoon? The center of the hole has got to be eighty feet from the end of the pontoon.

Q. You are not bound to put the vessel up at the end of the dock?

A. I put her exactly where I please.

Q. Put here where you want to. Yes, that is what I thought.

A. Nobody has any jurisdiction over that but myself.

Q. I don't mean that, but I mean, as a matter of mechanical arrangement you can put the vessel where you like on the dock?

A. Yes, the most convenient for all concerned; that is where I put it.

Q. What I mean is, it is not a mechanical impossibility to place the vessel so that the hole would have been all on one section?

A. No, sir.

Q. Then, as a matter of fact, where was the division, or where was the opening placed,—how much on one section and how much on the other, if you recollect?

A. There would be probably,—well, it would be pretty near the center, as near as possible, be as much on Number 2 pontoon as there was on Number 1.

Q. Have you got any representation of this dock here?

A. No, not any here.

Q. Any plat, or anything to indicate it?

A. There are plenty of photographs there of the dock. There is a photograph of the dock (witness producing same).

Mr. FLANDERS: That shows you what the dry dock looks like, with nothing in it.

Q. That shows the sections, doesn't it?

A. Yes, sir.

Whereupon counsel for Claimant offered said photograph in evidence on behalf of Claimant, and the same was received without objection and marked CLAIMANT'S EXHIBIT 1.

Q. Witness is shown Claimant's Exhibit 1; can you indicate on this picture the location of the Elder?

A. Yes, I could locate it, but you would not understand it. There is where her stern was, right there (indicating.)

Q. Well, just make a mark there.

Whereupon the witness marked with the letter "S" a location on the dry dock fore and aft opposite the stern of the Elder, and the witness then stated that the bow of the Elder was at a point about opposite the letter "B", and that the center of the hole in the Elder was located fore and aft on the dry dock after the vessel was placed thereon, about opposite the letter "H".

Q. On which side do you say the most of the hole was?

A. The starboard side; that is the starboard side of the ship; that is, the starboard side of the dock; opposite there (indicating.) This is the starboard side of the dock (indicating.)

Q. Now is this dock a suitable dock to repair a vessel wrecked as the Elder was wrecked?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial, and not within the issues

made by the pleadings.

A. The most suitable dock in the world.

Q. Then you think that this ship could be repaired better on this dock than any other kind of dock?

A. I didn't see the repair work done. I said the most suitable dock to dock a damaged vessel on.

Q. Now, how about these sections of this dock moving up and down, as boats go by?

A. They all move in a uniform way, all of them, the same as any other floating dock would do.

Q. Does one section of the dock move up further than the other section?

A. Not when there is a vessel on.

Q. They don't?

A. No.

Q. Have you some way of making this dock fast and solid so it acts as one?

A. One piece?

Q. One piece?

A. The vessel makes it one piece, the vessel herself.

Q. But you don't have in any other way?

A. No.

Q. You don't have any blocks or fastenings between the sections of the dock to hold them uniform?

A. Oh yes, we have locking blocks, always hold them together. It is always held together by locking logs, the amount of pontoon that she is on only.

Q. Then you do have some other way than the vessel to hold the dock solid?

A. They are locked together. Shall I explain to you just how they are locked?

Q. Yes, of course.

A. They are locked together by timbers twenty-four inches square running along on each pontoon twenty feet, and locked with an eye-beam; they are bolted in the other end, held there tightly, until that acts as a hinge, just the same, so it brings the dock to any shape the vessel may be that is in a damaged condition; it will bring that dock up to any broken part of the ship, if it is not broken too much. It can't bring it up eight feet, the same as the Elder was.

Q. Now the opening in this vessel was placed over, or on, two of those pontoons?

A. Immediately.

Q. And did they remain in a level or straight condition?

A. They came exactly up to the line of keel that was broken.

Q. And did they assume that—

A. (Interrupting). Eight foot curve? No.

Q. That curve in there?

A. No; they assumed about eighteen inches of a curve, though. No; you didn't think they come that high, did you?

Q. I was just trying to find out; I didn't think anything about it.

A. Well, you just said that now.

Q. Then there was a raise of about eighteen inches in these pontoons where this opening was, was there?

A. There was a raise from the forward end of the

ship, from the stem of the ship to the end of the pontoon; that would be about ninety-five feet; she was fifteen feet over the pontoon on the apron; there was a raise of about eight inches.

Q. Eight inches instead of eighteen?

A. Yes. The ship was broken down that much.

Q. Now when vessels, or ships, or steamboats, and so forth, went by there, did the sections of that dock go up and down separately?

A. All uniform; all three of them went uniform.

Q. And would there be any movement of one pontoon that wasn't on the other?

A. No, sir.

Q. Up and down?

A. No, sir; it all come right like one piece.

Q. Don't you have to sometimes change your ballast, or take out some ballast to make your pontoons uniform?

A. Yes; oh, yes; we do that with water.

Q. You do that with water?

A. We do that with water, or ballast. We did that with ballast in this case, and with water also. It is all done by water now.

Q. Now this ship was docked, or commenced to be docked, on the 26th, I think, or 27th of May, and was finished about the 27th or 28th; is that right?

A. Yes.

Q. Now, what was done with the ship from that time until, say, the 20th, or 26th, of June?

A. Well, now, I want a right date. Give me a correct date. Now the 20th, or 26th?

Q. Well, say the 26th.

A. The 26th?

Q. Yes.

A. As I stated on my direct examination in answer to the question, what was done on the Elder between the time she was lifted on the dock the 28th of May, up to the 20th of June, there was a gang of laborers working moving the cement that had been put in the ship and the cargo that had been left in the ship, and others cleaning up the engine and engine room and cabins.

Q. Now, do you know whether that was completed on the 20th, or whether it was not completed until the 26th? Have you any record about it?

A. Which do you mean, the cleaning up?

Q. Yes.

A. No.

Q. You don't know; it might have been the 26th, or it might have been the 20th?

A. I don't know, because I didn't keep no record of that.

Q. Then this statement, up to the 20th of June, that you made in your direct examination, was just from memory?

A. Oh, no; it is in my record book, my log book.

Q. Where is your log book?

A. Down at the dock.

Q. You didn't bring it with you today?

A. That is copied from that book.

Q. Will you let me see that log?

A. Yes, certainly. I will bring it up here and

leave it, if you want it.

Q. Now, in this time between the 28th of May and the 20th of June, they took out a large amount of cement?

A. A great deal of cement had been put out.

Q. Have you any idea how much was taken out?

A. Oh, I presume a hundred tons of cement.

Q. And they took out some cargo, too, you say?

A. Yes, took out a lot of flour, a whole lot of flour in the after end.

Q. In taking out this cargo did that change the location or position of the pontoons?

A. Just as they took it out, exactly, we—

Q. (Interrupting). And did you have to change your ballast?

A. We regulated that; just as they took a quantity away we put in an equal quantity to counterbalance that of ballast, out of our own ballast.

Q. Then you say on the 20th of June this ship was ready to begin repairs?

A. No, I didn't say that. I say they commenced to do repairs.

Q. Well, they commenced?

A. The contract was let that day, and they commenced at one o'clock.

Q. Now, was the ship in position on the dock, or the dock in position for the ship to make repairs at that time?

A. Yes, at any time. The first day she was on the dock she was in position to make repairs.

Q. Now, isn't it a matter of fact that from the

20th of June to the 9th of July, that you and your men were at work trying to get this dock in shape so that that vessel could be repaired?

A. On what date?

Q. From the 20th of June to the 9th of July?

A. No, nothing of the kind. We could not do anything in regard to getting the ship in shape for repairs until all the old work was cut out of her, all the broken work.

Q. Now, isn't it a fact that between the 20th of June and the 9th of July many times you were requested by the contractors to bring this dock into line, and that you did not do it?

A. No, no. I can give you the date the first time—nobody ever asked me to line it, that I recollect. The only time we could have brought the ship into line was the day they brought the new keel; I can find it but I don't know. I think I have got that date in my record.

Q. Now, isn't it a fact from the 9th of July to the 14th you and your men were employed pumping out the forward section of the dock and putting in ballast?

Mr. FLANDERS: I object to that, on the ground that it is incompetent, irrelevant and immaterial, and not within any issue made by the pleadings.

A. From the 9th to the 14th we probably was trimming the pontoons, as we do daily when any ship is on the dock; we might have been doing it then as well as any other time. We trim the pontoons every day.

Q. Now, were you there during all this time?

A. Yes, sir. Let me see; I might have been a day or two absent; that is all. I think I said I was there every day, but I might have been a day or so away, but I am not sure of that. I have got a record of it, if I was.

Q. You say then you might have been away part of the time?

A. I might have been a day away; that would be all; on some Sunday. I was there some Sundays.

Q. They didn't work on Sunday, did they?

A. Sometimes they did. We work all the time; we never have any Sundays.

Q. You say you were not away at all?

A. No.

Q. Only one or two days?

A. That is all.

Q. When was that, do you remember?

A. That must have been in July, I guess, or August.

Q. Weren't you away sometime in August?

A. I might have been away in August a day or two.

Q. Isn't it a fact that you were away the last part of July as well as the first part of July?

A. No, it is not a matter of fact; it aint so.

Q. Well, I am asking you; all you have got to do is say so.

A. It aint so. There was nothing of the kind. If I am away a day I don't call that being absent. No; I am in communication with the dock; I am away

from the dock today, for instance, but I don't call myself away because I am up here, because I can communicate with the dock in five minutes.

Q. I see; you are sort of omnipresent?

A. The same as you can be called up by your office when you are down town, and you are not away, are you?

Q. Well, I am away sometimes.

A. Well, when you go hunting, maybe.

Q. So then, when you say you are not away from the dock, you mean that you are not out of the City of Portland; is that it?

A. Yes, I mean that.

Q. Then there were a great many days during the time this ship was on the dock that you were not actually, in your physical presence, present at that dock?

A. No, not a great many days; maybe a day or two in three months.

Q. Now, isn't it a matter of fact that after this dock was put into line on the 14th of July it immediately got out of line again and the work was delayed on that account?

A. No, sir, it is not a matter of fact; it aint so.

Q. Wasn't the dock put out of line by some steamboats going by at a rapid rate?

A. No, sir.

Q. And making large waves?

A. No, sir.

Q. Wouldn't that put the dock out of line?

A. No, it would make the dock move bodily, but it

would not put it out of line.

Q. Do you pretend to say that this dock does not move independently at all, each section, when a steamboat goes by?

A. If there is a vessel on, no, sir.

Q. Well, when the Elder was on?

A. When the Elder was on, no, it could not move. It would break the ship if it moved; it would break the ship if it moved to any extent at all. These people knew the kind of a dock they was going on to.

Q. Now, isn't it true that this dock wasn't got in proper shape for these people to put in their keel and do their work until the 18th of August?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial, and not within the issues made by the pleadings.

A. No, sir.

Q. Now, in the management of this dock, how many men do you use?

A. It depends on what we have to do. It depends on the size of the ship on the dock and what other work is going on, and things of that kind.

Q. Do you keep a regular crew there all the time?

A. Yes.

Q. How many do you keep there?

A. A regular crew amounts to the superintendent, engineer, foreman and watchman.

Q. Is that all?

A. That is all the regular employes, that is, un-

der fixed salary. Others are employed as required there.

Q. Where do you get those men?

A. St. Johns.

Q. And what is their business?

A. Their business is laborers, some of them ship carpenters, some of them calkers, some of them machinists.

Q. Just ordinary ship carpenters?

A. Yes.

Q. When you docked the Elder how many men did you have?

A. I think we had in all about sixteen men,— sixteen to twenty, sometimes more.

Q. Sixteen to twenty men?

A. Yes.

Q. What were those men doing now?

A. Those men were on top of the pontoons, manipulating the valves, putting the blocks in, holding the shores up, rigging the dock, getting ready for the Elder, and whatever might be necessary to be done for the docking of the Elder, waiting for her to be put into position for her to be docked.

Q. Those were not regular men of yours?

A. They were pretty near regular, some there five years off and on. They are not steadily employed, they are paid by the day. Most of them I had there on the Elder, probably ten of them, were men that would be employed there nearly all the time.

Q. And the other ten were men you picked up?

A. Picked up, yes.

Q. Any of them ever work on the dock before?

A. Yes, they had all worked on the dock before sometime. I don't think there was a greenhorn in the whole lot. I could tell by their names, looking then over.

Q. They had been accustomed to this work, had they?

A. Oh, yes, sufficiently accustomed to the work to see that everything was going right. I could always see for myself whether they were doing right or not.

Q. The men that were regularly employed there, who were they now, on the regular crew? You said four, didn't you?

A. Me, the engineer, foreman, watchman.

Q. And who else?

A. And myself; I said myself.

Q. The foreman, engineer, watchman and yourself? That is four?

A. Yes.

Q. Now the foreman didn't do any work, of course; he directed the business?

A. Yes.

Q. The engineer, of course, attended to his engine?

A. There are two engineers in this case, the engineer running the power house and an engineer running the motor.

Q. And the watchman of course didn't do anything?

A. The watchman had boatmen and had another man in his place.

Q. Boatman; what do you mean by that?

A. To take the lines from the ship and make then fast, and attend to centering the ship at the after end. We keep him for that purpose.

Q. Then the work of docking the ship was done altogether by a crew who were not regularly employed?

A. Ten of them was regularly employed.

Q. Well, they were not on the regular payroll of the dock, were they?

A. They were all on the payroll of the dock the month previous, and the month previous to that.

Q. Yes, but they were simply hired men that you paid by the day?

A. Hired men we paid by the day, yes, sir.

Q. Now you say that you did have some notice at some time about the dock being out of line?

A. No, no. I will take it all back, if I said so. I said there might be a question of moving some of the blocks, or something of that kind, to get them out of the way.

Q. And you were never requested to put the dock in line?

A. Yes, I was, once, by Mr. Kelley.

Q. By Mr. Kelley?

A. Yes; I put it in line for him, too.

Q. You put it in line?

A. Yes. That was when he got his keel; I don't know the date; it was two or three days after he got

the new keel to put in place.

Q. Then you had some conversation with Mr. Peterson about the condition of the dock, too, didn't you?

A. No, sir.

Q. Mr. Peterson complimented you very highly on docking the ship, did he?

A. That is what he did, many times.

Q. Said it was a first class job?

A. Yes, everything first class.

Q. And what was it he gave you?

A. A diamond pin. That is kind of hard, isn't it?

Q. Well, was this to go as part of the compensation for docking the ship?

A. No, sir; just because he appreciated the way I had done the work, I suppose.

Q. Well, there wasn't any understanding between you and Peterson that that should go as part of the pay for docking the ship at all?

A. No, sir, nothing of the kind. He said I took such interest in the ship that he appreciated my interest in the ship, taking so much interest, that he gave me a present of a pin on my birthday, the 7th day of July, a month after the ship was docked. It was kind of curious for Peterson to do that, wasn't it?

Q. What became of that pin?

A. I lost it.

Q. You didn't give it to the Port of Portland, did you?

A. No, I didn't.

Q. And the Port of Portland didn't get any benefit from that diamond pin?

A. Not a particle, no.

Q. Well, you were in the habit of being around with Peterson a great deal, weren't you?

A. I was around with him several times. He asked me to go around with him a great many times and give him information. I went down the river three or four times. He paid my expenses one time to go down to see the ship before she was floated. I was down the night before she was floated, too, with Peterson.

Q. You came up on the ship, too, didn't you?

A. No, I didn't come up on the ship; I came up on the McCracken. Two or three days after she was floated she came up.

Q. Now, who had charge of the dock when you were up in Portland, or not there physically, while of course you were there?

A. Mr. Johnson, the foreman.

Q. And is Mr. Johnson here?

A. He is in town; he is at the dock now.

Q. Has he been there ever since you have been there?

A. I employed him there and he has been there ever since we started the dock,—been there for five years and over.

Q. What else did Mr. Peterson give you besides the diamond pin,—anything?

A. Nothing.

Q. That is all?

A. That is all.

Q. Now you say something about the charges for floating this vessel being the regular charges, and charges that were made for different kinds of vessels; you don't know anything about that, do you?

A. Oh yes; it is left to me.

Q. That is not your business, is it?

A. Yes.

Q. Isn't that the business of the Clerk of the Board?

A. No. He makes out the bill. I give in the report and any extra charges on the ship I hand in to him and he charges it on the bill.

Q. Yes, but that is fixed entirely by the Board?

A. The rates of dockage is fixed entirely by the Board, but any extra labor, I put that charge on according to the time that is employed, the extra labor.

Q. Oh, then you have the right to put on the charge?

A. Yes, sir.

Q. For extra labor?

A. Yes, sir.

Q. And how do you fix that, then?

A. Why, the extra labor I employ and extra time they use, and extra blocks to put it up, and everything of that kind in connection with a wrecked ship.

Q. How do you determine the value?

A. In a case of this kind we ought to dock a ship like the Elder in four hours; we was twenty-four.

Q. I know, but how do you determine the value of it?

A. By the time we employ extra men.

Q. What did you pay those men?

A. \$2.50 a day.

Q. \$2.50 a day?

A. And overtime.

Q. How much do you charge us for it?

A. Charge you thirty cent per hour.

Q. Thirty cents per hour?

A. Yes.

Q. How many hours did they work,—ten hours?

A. I don't know exactly,—worked about sixteen or eighteen hours the first day.

Q. I know; you say you paid them two dollars a day; what amount, what time?

A. I didn't say I paid them two a day; now don't say that; I said two dollars and a quarter for eight hours.

Q. For eight hours?

A. Yes, sir.

Q. That is what I want to get.

Mr. FLANDERS: And extra for over time.

A. Extra for over time?

Q. Two dollars and a quarter a day for eight hours, and extra for overtime?

A. Yes, sir.

Q. How much extra did you pay them?

A. Oh, about thirty cents an hour. We charge thirty cents clear through for the Elder, because it was nearly all over time. It was in fact over time; it

was Sunday work, all Sunday and Monday night—Sunday night.

Q. Now you say you looked to the credit of the Elder to pay this?

A. Always look to the ship, never look to anything else. I have been twenty-five years in the ship business and never looked to anybody but the ship to pay any bills contracted for the ship or done for the ship by contract, or verbal, or any other way; always look to the ship for payment.

Q. Now you knew, of course, that Peterson was a responsible man, didn't you?

A. I didn't know anything about Peterson's responsibilities at all; in fact, I didn't think he was a responsible man.

Q. Didn't you make an agreement with Peterson what he was to pay for docking this ship?

A. No, sir.

Q. Didn't you make an agreement with Peterson?

A. I handed him a schedule of prices; that is all.

Q. Didn't you make an agreement with Peterson that you would look to him for the pay for the dockage?

A. I could not make such an agreement with Peterson.

Q. Oh, you could not?

A. I aint allowed to do that. I can only go by the prices made by the Board, the published rates.

Q. Then you can't fix anything, except as the Board says?

A. Nothing.

Q. Then does the Board say that you should charge thirty cents an hour for this extra labor?

A. After I tell them, yes.

Q. Oh, after you tell them, but they don't before.

A. No.

Q. You didn't tell them, then, you had made an agreement with Peterson?

A. No, sir, I never made any agreement with Peterson. How could I make an agreement with Peterson?

A. Well, I don't know. I was just wondering whether you did, or not.

A. Well, I could not.

Q. You did not?

A. No, I didn't; certainly not.

Q. And did you tell Peterson when you put the ship on there you were going to look to the ship for the pay?

A. I don't think I would be likely to tell him anything about it.

Q. Now in repairing this ship, do you recollect how much keel was put in?

A. Well, there would be about forty-five feet, I think.

Q. Forty-five feet of keel?

A. There was a straight keel, a piece of keel in the stem, about forty-five feet of straight keel.

Q. And then there was some in the up-turn?

A. Yes, in the stem, the fore-foot; that was made in Seattle. The bent piece of keel came from Seattle, two of them, both pieces. I think those are only approximate figures.

Q. That is all right; I don't expect you to be—

A. (Interrupting). To be exact about it, no.

Q. Now, do you know how many frames were put in this ship?

A. I think about eighteen or twenty; I don't remember which, though.

Q. How many places?

A. Twenty or twenty-two, roughly speaking; that is of the main plates, and there was two plates forward, I think.

Q. Any of the bilge keel put in?

A. Yes, there was a piece of bilge keel put in on the starboard side and repaired on the port side, I think. There was only a short piece.

Q. Any beams?

A. Oh yes, there was some beams put in, some 'tween deck beams and some of them broken. I don't know whether there was any main deck beams, or not; I guess there was, though.

Q. Now you said this ship was twisted somewhat; what did you mean by that?

A. Well, I mean by that both perpendiculars, that is the stem and stern post would not come in line.

Q. Well now, in line which way?

A. Plumb.

Q. Yes; up and down?

A. Vertical.

Q. Vertical?

A. Yes.

Q. Was she in that condition when she came on the dock?

A. Yes; and she is in that condition today.

Q. Was the machinery of this ship taken out at all?

A. No, I don't think so, only a small part; none of the main machinery.

Q. What was the condition of the machinery when she came there?

A. Oh, rusty and dirty; that is all; nothing broken about it that I could see. I looked around it casually, not in an official manner at all.

Q. Just breaking this hole into the bottom of the vessel didn't injure the machinery at all?

A. No, that was forward of the machinery; it didn't touch it at all; forward of everything,—forward of the boiler house. It was right in the cargo hold.

Q. It didn't break any machinery at all?

A. Not a thing, unless the cargo winch—well, that has nothing to do with the machinery of the ship.

Q. As a matter of fact, this ship was not a going ship when she came on there, was she?

A. No, no; she wasn't able to go; no, she could not navigate very well.

Q. She hadn't navigated for a long time, had she?

A. No; she was a year there, I think. She went

down in January, didn't she? It was over a year,—a year and a half. She went down in January, 1905, wasn't it?

Mr. FLANDERS: I don't know when it was.

A. Yes, she went down in January. She was over a year there.

Q. Now you say that there were certain keel blocks and wedges, amounting to \$94.25, damaged in docking the ship; how do you arrive at that value?

A. Well, the cost, the labor that was necessary to renew them, and the cutting of them up, destroying them.

Q. Do these wedges and keel blocks show on this picture?

A. No, not the ones that were there, used up; no.

Q. Well, the ones that were not used?

A. These are extra ones.

Q. Well, show me what you mean by wedges and keel blocks that were injured?

A. I will show you. These are regular bilge blocks that show along there; these blocks; there is one out of position not (witness indicating on Claimant's Exhibit 1.)

Q. You arrive at the cost of these by determining what the cost of replacing them is; is that it?

A. Yes, what it would cost to replace them.

Re-Direct Examination.

By Mr. FLANDERS:

Q. Mr. McIntosh, from the time that the Elder was lifted on to the dry dock in May, 1906, up to the

time that she was floated from the dock in September, 1906, was the cleaning up of the vessel or the repairs to the vessel ever at any time delayed through the fault of the dock?

A. Never; not one minute.

Q. As far as the dock was concerned, was there any reason—

Mr. SMITH (interrupting): Wait a minute; we object to that as irrelevant, incompetent and immaterial, and a conclusion of law.

Q. Was there any reason, at any time, as far as the dock was concerned, why the repairs to the vessel could not have proceeded uninterruptedly?

Mr. SMITH: I object to that also.

A. There was never any objection. There was no cause of delay at any time, night or day.

Re-Cross Examined.

By Mr. SMITH:

Q. Now you say there was not any cause of delay, night or day, at any time?

A. No.

Q. And still you say that you were not there all the time?

A. Well, I had a representative there, didn't I?

Mr. SMITH: That is all.

(Witness excused.)

C. L. JOHNSON was next produced as a witness on behalf of Libellant, and, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, said witness testified as follows:

Direct Examination.

By Mr. FLANDERS:

Q. Mr. Johnson, what is your occupation?

A. Foreman of the dry dock.

Q. The dry dock of the Port of Portland?

A. The dry dock of the Port of Portland.

Q. You have been foreman there for how long?

A. Since its creation.

Q. Under Mr. McIntosh?

A. Under Mr. McIntosh.

Q. You were its foreman during the time the *Elder* was lifted on the dock and while she lay on the dock?

A. I was.

Q. And when she was floated?

A. I was.

Q. She was lifted on the dock when?

A. On Sunday, the 27th day of May.

Q. And she was floated from the dock when?

A. September 18th.

Q. How often were you at the dock during that time?

A. Every day during that time, from the time she was on it until she was floated.

Q. You may state whether or not the lifting of the vessel on the dry dock was attended with any difficulty.

A. Yes, sir, it was; it was very difficult.

Q. Why?

A. Well, in regard to the wrecked condition of

the vessel, she didn't have the usual shape of a vessel that was all right, and we had to block her up differently than we would an ordinary vessel.

Q. State whether or not on that account you were compelled to employ extra labor, or work longer with your regular force.

A. We employed extra labor and worked longer. The usual time taken is about four hours, and we worked twenty-four.

Q. That is, in the actual raising?

A. In the actual docking.

Q. Yes; and how about any extra time which you incurred, either before or after the vessel was actually docked, which you would not have been obliged to incur but for her condition?

A. Before the vessel was docked it was necessary for us to build a lot of extra blocks known as cribs; in case that our usual blocks, regular blocks, didn't take the vessel, these cribs could be blocked under by a diver and the vessel could settle down, and the cribs would hold her in an upright condition.

Q. Were these cribs used?

A. Those cribs were used, yes, sir.

Q. Would you have been obliged to build or use those cribs had the Elder not been in a wrecked condition?

A. No, no; we would not have used them at all.

Q. Well, now, after you got the vessel on the blocks and the dock pumped out, were you obliged to furnish any extra labor?

A. We were.

Q. What was that for?

A. Well, her shape was such that she did not take an equal load on the blocks that was intended for her support, and we had to build other blocks to get her in a solid, safe condition.

Q. Would you have been obliged to do that but for her condition when she was put upon the dock?

A. We would not.

Q. You have heard Mr. McIntosh's testimony?

A. I have.

Q. What are the facts as to the hours of labor, the four hundred fifty-eight hours of labor to which he testified?

A. They are correct.

Q. And the charge per hour, thirty cents an hour, what do you say as to that?

A. That was the charge at that time.

Q. You heard Mr. McIntosh's testimony in regard to these keel blocks and bilge blocks which had to be replaced after the Elder was floated from the dock?

A. I did.

Q. What are the facts regarding that?

A. The facts in regard to the blocks, you mean?

Q. Yes.

A. What was done to them?

Q. Yes.

A. Well, he stated that the blocks—

Q. (Interrupting). Never mind what he stated.

A. There was some excessive weight on the blocks; and therefore, they had to be split out, and

therefore damaged. Twenty-two of them, I believe, was the number of those damaged that had to be split out and totally destroyed.

Q. Would that have been required but for the condition in which the Elder was when she was lifted on the dock?

A. It would not. We have docked her three times since and have not destroyed any blocking.

Q. This was on account of the damaged condition of her keel?

A. The damaged condition of the vessel, yes, sir.

Q. You may state, Mr. Johnson, whether there was any delay in the repairs to the ship while she was on the dock, due to the dock itself.

A. None at all.

Q. Was any complaint ever made to you, or in your hearing, by Mr. Peterson, or the superintendent, or the contractor, in reference to the dock?

A. No, sir, no complaint at all.

Q. It is charged in the answer, under paragraph 3 of the answer, that the Port of Portland carelessly and negligently suffered and permitted the sections of the dock to become and be out of alignment, and carelessly and negligently suffered same to remain out of alignment after due and proper notice thereof, whereby said hulk of the Elder became warped, twisted and hogged and greatly damaged; what are the facts regarding that?

A. It is not so.

Q. Did the Elder herself while on the dock receive any injury or damage whatever?

A. She did not.

Cross-Examined.

By Mr. SMITH:

Q. Mr. Johnson, you were down at this dock at the time the Elder was docked, were you not?

A. I was.

Q. What position did you occupy there?

A. Foreman.

Q. Under whose direction did you act?

A. Robert McIntosh.

Q. What position did he hold?

A. Superintendent.

Q. And whatever you did, you did by his direction; is that right?

A. I did.

Q. You did not take any action in connection with the dock, except you were told by him?

A. None whatever.

Q. Now, what was the condition of that dock as to the different sections being in line when the ship was put on?

A. She was a vessel that occupied three sections of the dock; two sections was practically in line. The forward section known as number one at the dry dock, was probably eight or ten inches out of line; that is, on the keel, you know,—the line of the keel.

Q. And did you try to get that in line?

A. We tried a time or two, yes.

Q. How much time did you spend trying to get that in line?

A. Well, the amount of time shifting ballast and

pumping, that would be hard to say. We took considerable ballast out of the front end, which caused the section to be held down at the other end under the bow of the vessel, moved it to the back end of this section which should have weighted it down; took some water out of the front end and added some to the back end. The actual time, I could not state how much was consumed in this operation.

Q. Well, ordinarily how do you expect to put your dry dock in line, by water ballast?

A. Water ballast, yes.

Q. And to do that your compartments must be tight, mustn't they?

A. Yes.

Q. Well, were the compartments tight in that section 1 at that time?

Mr. FLANDERS: I object to that as irrelevant and immaterial.

A. Well, practically tight. There was nothing there that the pumps could not overcome easily.

Q. They were not tight, though, as a matter of fact?

A. Well, in this case we would have to say they were tight, because the pumps would overcome any seepage that might be. They were tight as far as any inflation was concerned.

Q. Did you keep your compartments working all the time?

A. Not necessarily; no, we did not.

Q. How much time during the day did you keep your pumps working?

A. We pumped the dock, oh, I will say six times while the Elder was on.

Q. And then when your pumps were not working, the water would leak back from one compartment into the other, would it, and put the dock out of line?

A. No; each time we would work the pump would be to try to straighten it up more.

Q. To try to get it back into line again?

A. No, not to get it into line again, but to straighten the vessel more.

Q. To straighten the vessel more?

A. Assist in putting the vessel into its original shape. The vessel was practically broke in two after she was put on the dock, wasn't she? After the cement was taken out that kept her afloat?

A. The vessel would be considered by any one broken in two.

Q. Yes.

A. And the forward portion of the vessel had a list to port, while the after portion of the vessel was erect. To assist in straightening the vessel we pumped the dock.

Q. You didn't pump out your dock to straighten the vessel, did you?

A. To get the vessel into its original shape.

Q. Not from the side? You pumped out your dock to get it up into line, didn't you, with the other sections? I mean lengthwise, not longitudinally.

A. We pumped the dock to straighten the vessel and also to bring the keel in alignment,—to bring

the vessel at once into alignment.

Q. As far as her keel was concerned?

A. If she had been docked on a rigid foundation she would have broken actually higher up into the vessel, which would have necessitated more repairs possibly.

Q. Now, to make the forward part of the vessel and the after part of the vessel come in line, you built some cribs on each side of the front part of the vessel, but that was on section Number 1, didn't you?

A. Yes, some cribs.

Q. You didn't undertake to put the vessel into line in that way with your dock, did you?

A. I don't understand the question.

Q. Well, to get the forward part of the vessel in line with the after part of the keel?

Mr. FLANDERS: I object to all of this cross-examination on the ground that it is incompetent, irrelevant and immaterial, and not within the issues disclosed by the pleadings.

Q. Well, you say the forward part of the vessel had a little list to port; to take that list out you did that to your cribs, didn't you, not to the dock?

A. We merely did that to assist the repairs of the boat.

Q. Now, what position was this vessel in as regards the damaged part and the opening between the two docks, two sections?

A. Well, we will say that the middle or damaged portion of the vessel.—say she was damaged in an arch shape, formed like that (indicating), the

middle of that arch came about over the opening, about over what might be called the hinge in the dock.

Q. Now, about how much play do these separate sections of your dock have up and down?

A. There is about three inches.

Q. There is about three inches?

A. The timber that unites the sections of the dock is an inch and a half free, and this one having an inch and a half on that pontoon and this one an inch and a half on that would make a variance of three inches in the two (witness illustrating).

Q. Right there?

A. At that point (indicating.)

Mr. FLANDERS: Is that longitudinally?

A. That is longitudinally.

Q. Now, at the end of the pontoon eighty feet away, that would be exaggerated a good deal, wouldn't it?

A. Well, yes. You could figure that out by taking an inch and a half—

Q. (Interrupting). Take three inches, or an inch and a half at that place, and off eighty feet it would go down considerable, wouldn't it?

A. It would make considerable difference.

Q. Well, now, was there any play, or did it move in any way? What did you call that? This was longitudinally, the other would be lateral.

A. Not lateral, no.

Q. It had no movement at all?

A. No play that way; not while there was a rig-

id keel base the length of three pontoons; all three pontoons moved in harmony.

Q. Well, but if there was not a rigid keel base?

A. Well, in this case it was, for each pontoon is under separate weight and under its own weight there is lateral motion, but where there is a rigid keel base there is not. Any swell of waves that might come from the river would move the hull in union.

Q. But there was not any rigid keel base in this case, was there?

A. Well, you might say the vessel was broken in two, yet there was upper work enough to hold the wall rigid.

Q. Wasn't there about forty or forty-five feet that there wasn't any keel at all?

A. Forty-five feet there wasn't any keel, but the same way it was taken forward as it should have been taken if the keel had been there. It had the weight the same, and the rigid influence was above; in the absence of it being in the keel it was in the upper work of the vessel.

Q. Well, don't you know that this vessel was in such condition that that upper work would not hold her rigid?

A. As far as lateral movement?

Q. Yes.

A. It would hold her perfectly rigid laterally.

Q. Well, then, there was a movement between pontoon No. 1 and Pontoon No. 2, until you got the

keel in, wasn't there,—she would move up and down?

A. It could possibly move up and down. If we could get more ballast forward, why that would assist in bringing the bow up to its original position.

Q. I see. Was there any wobbling movement, movement of one side of the pontoon nearer the other side of the pontoon, between the pontoons? That is, would one side of the pontoon be nearer, say one side of Pontoon No. 1 be any nearer than the other side to Pontoon No. 2?

A. Well, in docking there, take for example the port side, which was the case, it carried very well in alignment, while on the starboard side there was no way to block the pontoon down, because the absence of the hull there, it being crushed up by the rock that she laid on, there was no way to block that lower corner, we will say, of pontoon No. 1, down, because the hull of the vessel was gone; there was nothing to block it on, and in pumping out of course that carried higher than the other side did in relation to the other two pontoons?

Mr. FLANDERS: What is that?

A. I said that the pontoon was practically in line on the port side, but on the starboard side, the absence of the vessel's hull where it was crushed away with the rock, that the lower end of No. 1 raised up higher than it would otherwise. That was the question you asked me.

Re-Direct Examination.

By Mr. FLANDERS:

Q. Now, Mr. Johnson, you say that the forward section of the dock when you docked the vessel first was eight to ten inches out of line; in what way was it out of line?

A. The bow of the vessel drooped in its broken condition, throwing the after part of No. 1 right over the break too high to be in line with the keel of the other two sections, and the forward part too low.

Q. In other words, the forward end of section No. 1 was down in the water and the after end up?

A. The forward end was too low and the after end too high.

Q. And was that caused by any defect in the dock?

A. No defect in the dock; a defect in the boat, as I look at the matter. The boat was drooped down, and in bringing up the boat if it had been brought all at once it would have possibly broken it more than it was broken.

Q. In other words, the bow of the boat had dropped some eight or ten inches, is that right,—was about eight or ten inches up and down out of line; is that right?

A. The bow of the boat was too low to line up with the remaining two thirds of the boat.

Q. Now, how was this corrected?

A. Well, we took all the ballast that we could get out of the forward end of the pontoon. That give us the lifting power of what ballast we had moved, put that on the after end of the pontoon give us the lowering power of the weight of that ballast and

righted the pontoon to the extent of the weight of this ballast, bringing the number 1 pontoon as nearly as we could in line with 1 and 2,—or 2 and 3.

Q. And did you succeed in this?

A. Practically succeeded.

Q. And how long did it take you to do it?

A. Well, I could not say as to just how many days we were moving ballast out of this hole putting it back to the after end of the pontoon. And for a while each day we would take what water we could get out; and in changing the water and the rock I could not say as to how many days we were at it,—several days anyhow.

Q. And do you remember when you started in on this?

A. No, I do not. As to dates I don't know.

Q. Well, did this occur at the time that the vessel was first docked, or was it afterward, after they had removed the cement from her?

A. It was after they had moved the cement and broken and condemned parts of the vessel that this took place.

Q. Were, or were not, repairs on the vessel going on while you were adjusting the dock?

A. They were all the time working on the vessel. After they once started they never stopped work on the vessel.

Q. Well, were they delayed at all in their work of repairs by the time it took you to get this forward section of the dock adjusted?

A. Well, as to their matters I could not say. We

were working with that and whether their work was up to us or whether it was not, to be positive I could not say.

(Witness excused.)

JOHN P. DOYLE was next produced as a witness on behalf of Libellant, and, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, said witness testified as follows:

Direct Examination.

(By Mr. FLANDERS):

Q. Mr. Doyle, your occupation is what?

A. Clerk of the Port of Portland.

Q. How long have you been clerk of the Port of Portland?

A. About two years and nine months.

Q. Now, give the exact date when you became its clerk?

A. July 12th, 1906, I was elected clerk.

Q. And you have been the clerk of the Commission ever since that time?

A. Continuously since then.

Q. Who has charge of the books of account of the Commission?

A. I have.

Q. And have had, continuously, have you, since you were elected clerk?

A. Yes, sir.

Q. You may state, Mr. Doyle, whether or not on or about the 21st day of September, 1906, a bill was rendered by the Port of Portland to the steamship George W. Elder and owners for the dry-docking and

use of the drydock furnished the Elder during that year?

A. Yes; I rendered such a bill on instruction from the Board.

Q. Is this a copy of the bill?

A. Yes, that is a copy of the bill. This is the copy of the final bill rendered. I previously rendered a bill for \$7,294.55, which was paid September 20, 1906.

Q. That was for the dock up to a certain date, was it?

A. To my memory it was to the first of September. I could verify that from the records. The Board instructed me to render a bill, as I remember it, for the services up to the first of September, which I did, and which was paid September 29th. I can look in my minutes here and see what my instructions were. (Witness here refers to minutes of the Commission, and reads from same.) "Clerk was instructed to render a bill to the steamer George W. Elder, August 1st, 1906, and monthly bills hereafter, and report to the Board if bills are paid or not at next meeting." On August 1st I rendered a bill to August 1st. The bill for \$7,294.55 was for the use of the drydock up to the first of August, 1906, and that amount was paid to the Port of Portland on September 20th, 1906.

Q. And the bill which I now hand you is the final bill which was rendered, showing this credit?

A. Yes, the amount paid is taken off of the total bill for dockage, and shows a balance of \$4 788.00.

Proctor for Libellant here offered said bill in evidence, and the same was received and marked LIBELLANT'S EXHIBIT A, and is returned herewith as a part of this record.

Q. You may state, Mr. Doyle, whether the charges on which the bill so rendered is based, were the charges of the Port of Portland for the use of its drydock prevailing from the time that the Elder was first docked until she was floated.

A. Yes, they were the regular charges, being the published rates.

Q. That is the item in here the first day, "5-29, 27 cents," amounting to \$461.70, is what?

A. That is the dockage charge, which includes the raising of the vessel and the occupancy of the dock for the succeeding twenty-four hours.

Q. And these items, May 31st, June 1st, 2nd, 4th and 5th, at ten cents, amounting to \$171 for each day,—they are the charges for what?

A. They are the charges for each of the succeeding lay days. That is, the next five days that the vessel was on the dock after the expiration of her first twenty-four hours, not including Sundays or holidays when no work was done on the vessel.

Q. And this item, \$10,533.60, 88 days from June 5th to September 18th, at seven cents per day,—that is for what?

A. That is for all the lay days the vessel occupied the dock after the first six days, excluding Sundays and holidays when no work was performed upon the vessel, upon such Sundays and holidays.

Q. Those were in each instance the published tariff rates?

A. Those were the published rates at the time the Elder was docked and undocked.

Q. You deducted from her days when on the dock what days?

A. I deducted nineteen days for Sundays and holidays.

Q. That is, holidays, you mean, like the Fourth of July and Labor day?

A. Yes, such days as are legal holidays.

Q. These charges for 460 hours extra labor at thirty cents, amounting to \$138, are for what?

A. That was for extra labor in setting the keel blocks and preparing it for bilge blocks, and so forth, as I understand it, to support the vessel's shape on account of her wrecked condition.

Q. That is the time as given you by Mr. McIntosh?

A. Yes.

Q. And the damage to keel blocks and wedges, amounting in the first item to \$88 and the second item to \$6.25 are the items given you by Mr. McIntosh?

A. Yes, sir.

Q. And charged according to him?

A. Yes, according to his report.

Q. Now, how much money has been paid the Port of Portland on this bill?

A. \$7,294.55.

Q. And there is due on it how much?

A. \$4,788.00.

Q. You may state whether or not, Mr. Doyle, between the 1st of September and the date the final bill was rendered, you rendered any other bills?

A. No, I did not.

Q. After the bill of September 21st was rendered what was done by the owners of the Elder in reference to the bill?

A. Well, their attorney presented a petition to the Board asking that allowances be made in the charges against the vessel for dockage.

Q. Have you that petition?

A. Yes, I have the petition.

Mr. FLANDERS: I offer that in evidence and ask leave to substitute a copy, as that is a part of the records of the Commission.

Whereupon said paper was received in evidence on behalf of Libellant, and the substituted copy thereof is marked LIBELLANT'S EXHIBIT B and is returned herewith as a part of this record.

Q. What did the Commission do in reference to the petition?

A. I could only answer that from the record.

Q. You were clerk of the Board at that time, were you?

A. I was.

Q. Well, what do the records state?

A. The action of the Board was an order that the petition for reduction in the charges against the steamer George W. Elder be not granted, and the clerk was instructed to write the petitioners, giving

the reasons of the Board for not granting their petition.

Q. That action was taken by the Board?

A. This action was taken October 22nd, 1906.

Q. Did you write to the petitioners?

A. Yes.

Q. Did you demand payment of the balance of the bill?

A. I don't remember the wording of that letter.

Q. Has the balance of the bill ever been paid?

A. No, sir.

Q. Against whom upon the books of the commission was this bill charged?

A. The steamship George W. Elder and owners.

Q. To whom did the Port of Portland look for the payment of its drydock charges on the George W. Elder?

A. To the vessel itself and the owners of the vessel.

Q. Upon whose faith and credit was this drydocking given?

A. On the faith and credit of the steamer George W. Elder.

Q. During the time the George W. Elder was on the drydock, you may state whether or not the Port of Portland lost other business, owing to the fact that the dock, or a portion of it, was occupied by the George W. Elder.

A. Yes, other business was lost. And we had one very strong complaint from the ship's agent because a large steamer could not be accommodated on the

dock, the British Steamer Beckingham.

Q. You may state whether or not, Mr. Doyle, the tariff, or charges upon which the bill against the George W. Elder was based, was a public and published tariff?

A. It was.

Q. How were these charges published?

A. They were published by distributing printed copies among the people interested in shipping, supplying shipmasters using the dock with booklets containing the rules and rates, and many copies were mailed to ship owners and the rates were also placed in the offices of shipping firms by way of posters which were generally tacked on the wall or other conspicuous places in these offices; they were also posted in a conspicuous place at the drydock.

Q. That is, during the time the Elder was on there?

A. Yes.

Q. You say you rendered a bill for the drydocking of the vessel up to August 1st, 1906, in compliance with the directions of the Commission?

A. Yes, sir.

Q. To whom was that bill rendered and presented?

A. The bill was rendered to the steamship George W. Elder and owners, and I don't remember to whom the bill was handed, or to whom it was made.

Q. Was any objection raised by the owners of the Elder to the amount of that bill?

A. Well, I believe their attorney appeared before the Board after that bill was rendered and gave notice that they objected to the amount of the charge. He also agreed to pay the amount of that bill, provided such payment would not be considered an admission by them of the correctness of the charge.

CROSS-EXAMINATION was waived by Proctor for Claimant.

(Witness excused.)

E. C. GILTNER was next produced as a witness on behalf of Libellant, and, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, said witness testified as follows:

Direct Examination.

(By Mr. FLANDERS):

Q. Mr. Giltner, your residence and occupation is what?

A. Secretary of the Chamber of Commerce; residence 771 Everett Street, Portland, Oregon.

Q. You have been Secretary of the Chamber of Commerce for how long?

A. This is my fifth year.

Q. Were you Secretary of the Chamber of Commerce during the entire year of 1906?

A. Yes.

Q. You may state whether or not during the year 1906 and prior to the 27th day of May of that year, the Portland Chamber of Commerce issued a shipping circular showing charges against shipping?

A. We issued one in November, 1905; that is, we issued a circular showing the Port of Portland dry-

dockage in November, 1905, a large amount of them for general circulation, so we did not issue again in 1906, because we had plenty.

Q. Have you a copy of what you issued that year?

A. I have it here in the Chamber of Commerce bulletin for November, 1905.

Mr. FLANDERS: I offer this, asking leave to withdraw the book and have the matter copied in the record.

Whereupon said matter was received without objection and set out in this transcript in full, as follows:

Q. And from whom was the information regarding charges of the Port of Portland for the use of its drydock, secured?

A. From the clerk of the Port of Portland.

Q. And this circular was distributed by the Chamber of Commerce during the year 1906, in what manner?

A. They were sent generally to ship owners in Europe, and given to everybody that we thought were interested in town, and then announcement made in the daily papers that they were here for those who cared for them.

Q. You kept a supply on hand?

A. Yes, a short supply.

Q. Which anyone interested could secure?

A. Yes.

CROSS-EXAMINATION was waived by Proctor for Claimant.

(Witness excused.)

CHARGES OF SHIPS LOADING IN PORTLAND.

Portland Chamber of Commerce Issues Bulletin:

The Portland Chamber of Commerce begs to point out to shipowners the customary charges which ships loading here may expect to incur.

BAR PILOTAGE. This charge is compulsory, and masters are strongly recommended not to attempt to enter the river without pilots, except in cases of grave emergency. The pilot schooner cruises in the neighborhood of the lightship, and pilots are also put aboard from tow boats when vessels are reported from North Head. Rates inward are \$5.00 per foot draft and 2c per ton net register, and the same outward.

RIVER PILOTAGE is not compulsory, the law having been repealed some years ago, the O. R. & N. Co., a perfectly responsible corporation, undertaking to man their tow boats with capable pilots in order thus to abate this unnecessary expense to vessels. The towing is done by stern-wheelers of high power, which are lashed firmly to the quarter of the ship, from which it will be seen that there is absolutely no need of any additional pilot. Your special attention is called to these facts, as masters are approached by river pilots who make their headquarters at Astoria, always solicited and often induced to employ their services. These remarks apply only to sailing vessels, steamers requiring pilots in all cases, their charges being \$2.00 per foot of draft and 2c per ton net register, up or down the river, and \$7.50 for each

move in the harbor.

Towage, stevedoring and drydock tariffs are appended hereto.

LINING FOR WHEAT CARGOES. This should be done by contract and should not exceed \$40.00 to \$60.00 per ship, according to size, in addition to the cost of lumber, which will average \$10.00 per M.

SEAMEN. Under the present state law, boarding masters are permitted to charge \$30.00 for each man shipped. This charge is payable by the ship and does not include an allotment of one month's wages which is usually collected from the seamen. Wages average L5 for A. B. seamen and L4 for ordinary seamen. Firemen and trimmers, L6 per month. This Chamber is now working for a reduction of port charges, and would be glad of any suggestions from owners, also to have them instruct their captains to call on the Chamber of Commerce for information and assistance in all emergencies.

**COLUMBIA RIVER TOWAGE TARIFF FROM
THE PACIFIC OCEAN TO PORTLAND
AND RETURN.**

Vessels 500 to 700 tons net register	\$500
Vessels over 700 to 1000 tons net register	550
Vessels over 1000 to 1200 tons net register	600
Vessels over 1200 to 1500 tons net register	650
Vessels over 1500 to 1800 tons net register	700
Vessels over 1800 to 2000 tons net register	750
Vessels over 2000 to 2500 tons net register	800
Vessels over 2500 to 3000 tons net register	850

Tug's hawser, when used, \$15 each way.

Vessels towed from the sea to Astoria and return only, will be charged 70 per cent of the rate charged to Portland and return.

Vessels in ballast towed from the sea and Astoria and return, when entering the river as a port of call and departing without cargo, will be charged 25 per cent of the rate to Portland and return.

DISCHARGING.

Ballast, 2240 lbs.	\$0.32½
Cement, 2240 lbs. ....	.30
Coal, 2240 lbs. ....	.35
General merchandise (weight or measure- ment) .....	.35
Pig iron, 2240 lbs .....	.35
Bricks and piling, 2240 lbs. ....	.60
Coke on dock, 2240 lbs. ....	.60
Coke at bunkers, 2240 lbs. ....	.70
Railroad iron, 2240 lbs. ....	.50
Street car railroad iron 2240 lbs.....	.55
Window and plate glass, 2240 lbs. ....	.60
Block marble, over 2 tons, 2240 lbs. ....	.70
Marble (slab), over 2 tons, 2240 lbs. ....	.60
Structural beams, 2240 lbs. ....	.75
Sulphur, 2240 lbs. ....	.35
Clay in bulk, 2240 lbs. ....	.40

LOADING.

Wheat or flour, 2240 lbs.	\$0.30
One-quarter sacks flour, 2000 lbs. ....	.35
Barley, 2000 lbs. ....	.30
Salmon, 2240 lbs. ....	.45

Lumber and timber at Portland and Astoria from \$1.00 to \$1.10 per thousand feet, according to specifications and conditions.

Lumber, timber and piles at other than Portland or Astoria, extra charge.

Piles at Portland and Astoria, \$1.10 per thousand feet.

PORT OF PORTLAND DRYDOCK.

Dimensions of Dock.

Length	468 feet
Width between wings	82 feet
Depth of water over keel blocks	25 feet
Lifting capacity, tons dead weight	10,000

Will handle vessels 500 feet long.

RATES OF DOCKAGE, STEAM VESSELS ON GROSS TONNAGE.

	First Day.	Lay Days.	Minimum \$30.00.
From 100 to 3000 tons.....	25c per ton, 10c up to 5 days,	After 5 days	7c
From 3000 to 4000 tons.....	22c per ton, 10c up to 5 days,	After 5 days	7c
Over 4000 tons	18c per ton, 10c up to 5 days,	After 5 days	7c

SAILING VESSELS ON NET REGISTER TONNAGE.

	First Day.	Lay Days.	Minimum \$30.00.
From 120 to 600 tons.....	22c per ton, 10c up to 5 days,	After 5 days	7c
From 600 to 750 tons.....	20c per ton, 10c up to 5 days,	After 5 days	7c
Over 750 tons	18c per ton, 10c up to 5 days,	After 5 days	7c

Scows of 140 feet deck measurement and under, \$30.00 for the first day, and \$10.00 per day for each succeeding day.

Steam vessels of less than 100 tons, the minimum charge of \$30.00 for the first day, and \$10.00 per day for each succeeding day.

Cargo charged for at the same rate as tonnage. No charge for ballast.

Wrecked vessels subject to additional charges.

Twenty-four hours constitutes a day. Time to begin when dock is out of water.

JOHN DRISCOLL was next produced as a witness on behalf of Libellant, and, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, said witness testified as follows:

Direct Examination.

(By Mr. FLANDERS):

Q. Mr. Driscoll, what position do you occupy, if any, with the Port of Portland?

A. Secretary of the Board.

Q. How long have you been its Secretary?

A. I think four or five years; now probably over five years.

Q. Continuously, or not?

A. Continuously.

Q. Are you a member of the Commission itself?

A. Yes sir.

Q. How long have you been a member of the Commission?

A. I think since 1903.

Q. Were you a member of the Commission, or Secretary of the Commission, during the time that the George W. Elder was on the dry dock in 1906?

A. Yes, sir, I was.

Q. Did you ever have any conversation with Mr. Peterson in regard to putting the Elder upon the dry dock?

A. None whatever.

Q. Or with anybody on behalf of the vessel?

A. No.

Q. To whom did the Port of Portland look for its pay for the dry dockage which it furnished the Elder?

Mr. SMITH: Objected to as incompetent, irrelevant and immaterial, and a conclusion of law.

A. To the ship.

Q. Did you know anything whatever as to the financial condition of Mr. Peterson?

A. No, nothing whatever.

Cross-Examined.

(By Mr. SMITH):

Q. Mr. Driscoll, do you have anything to do with making the charges on these ships at all?

A. Just on the schedule of prices that is got up by the Board.

Q. Do you make the charges?

A. The Board makes the charges.

Q. I know, but you don't personally have anything to do with it?

A. Nothing whatever, no, sir.

Q. You don't have anything to do with collecting the bills?

A. The clerk does.

Q. I say, you don't personally?

A. No.

Q. You are not the clerk?

A. No.

Q. You don't keep the books of the concern?

A. No. I sign the minute books and sign the records and sign the vouchers that are to be paid, as Secretary of the Board.

Q. Yes, but you don't keep any books?

A. None whatever.

Q. And don't collect any bills?

A. No.

Q. Don't know anything about what is going on on the dock?

A. Oh, yes.

Q. Do you have any authority to extend any credit of any kind on work performed on the dock?

A. Myself personally?

Q. Yes.

A. None whatever.

(Witness excused.)

DAN J. MAHER was next produced as a witness on behalf of Libellant, and, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, said witness testified as follows:

Direct Examination.

(By Mr. FLANDERS):

Q. Mr. Maher, where is your residence?

A. 13 East Seventeenth, this city.

Q. What occupation were you engaged in in the year 1906?

A. I was acting in the capacity of Clerk of the Port of Portland.

Q. What time, if any, in 1906, did you resign from the Port of Portland?

A. I think it was at the regular meeting in July.

Q. Of 1906?

A. Yes.

Q. You were what in connection with the Port of Portland in 1906 prior to July?

A. Clerk.

Q. Clerk of the Board?

A. Clerk of the Board.

Q. The same position Mr. Doyle now occupies?

A. The same that he now holds, yes.

Q. With the same duties, or not?

A. The same duties practically.

Q. Were you Clerk of the Commission at the time the Elder was put upon the dry dock in May, 1906?

A. I was.

Q. You may state whether, or not, Mr. Maher, prior to the lifting of the Elder upon the dry dock in May, 1906, the Port of Portland had issued a tariff containing its rates for the dockage?

A. It had.

Q. On the dry dock?

A. It had; yes, sir.

Q. And about what time was that tariff issued?

A. Well, I am assuming that that is about the correct date.

Q. That is the book that the Port of Portland got out (exhibiting to witness the book formerly produced by witness Doyle, the contents of which were copied into his testimony)?

A. Yes, sir.

Q. That was gotten out when you were clerk?

A. I will tell you, I can produce a book to which I can swear that was in force at that time, and that is probably an exact copy of it. That I believe to be a companion of mine.

Q. A what?

A. I have got a copy with my name on it at home in my desk, and I believe that to be one of the same lot. I believe there was about a dozen of them gotten out with a leather cover and handed to the men, the clerk, superintendent on the dock, and so forth.

Q. And this shows the rates from and after August 15th, 1905?

A. Yes, sir.

Q. Were these rates changed prior to the time you left the service of the Commission?

A. They were not.

Q. Now in addition to these ten or twelve books with leather covers, which you refer to, you may state whether or not the Port of Portland issued the same book bound differently?

A. They did, in cheaper binding, and in addition to that there were some sheets.

Q. How were those distributed?

A. Oh, they were handed around to masters of vessels, they were distributed around through the shipping offices of the city, grain concerns and the like.

Q. Did contractors for the repairs of vessels get them?

A. If they wanted them, yes; certainly. They were for general distribution to anyone that wanted them.

Q. Now were the schedule of charges and rates, and regulations, posted in the dry dock?

A. The schedule of charges and rates were posted at the dry dock, the rules and regulations.

Q. Did you ever have any conversation with Mr. Peterson about putting the Elder on the dry dock and about the charges?

A. Absolutely none.

Q. To whom did the Port of Portland look for the payment of its bill for dry docking the George W. Elder, and services which it performed in connection therewith?

Mr. SMITH: Objected to as irrelevant, incompetent and immaterial, and a conclusion.

A. To the vessel.

Q. Did you, as clerk of the Board, have any knowledge as to the financial responsibility of Mr. Peterson?

Mr. SMITH: The same objection.

A. No, sir.

Cross-Examined.

(By Mr. SMITH):

Q. You didn't pay any attention to the docking of the Elder, did you?

A. No, none other than—

Q. (Interrupting). You didn't know when she went on there, did you?

A. Oh, yes.

Q. How did you know?

A. Well, as you might know a good many things.

Mr. FLANDERS: I guess he was down there the day the docked her.

WITNESS: No, I wasn't there the day they docked her, but I was there the next day. They couldn't hardly dock her, Mr. Smith, without me knowing it.

Q. And you know every time a vessel is put on the dock?

A. Oh, yes.

Q. They come and ask you before they put it on?

A. Not necessarily.

Q. How do you know, then? What do they do that brings you in communication with the dock so as to know about it?

A. I made it part of my business to keep in touch with what was going on.

Q. You keep your office up here in the City Hall?

A. Yes, in the City Hall.

Q. And every day you go down to the dock, do you?

A. No, not necessarily.

Q. What do you do,—telephone down to McIntosh?

A. Whatever there is to be done. He reports to the clerk, who submits it to the Board.

Q. Oh, I see. Then before a vessel is put on the

dry dock they have got to get permission of the Board, have they?

A. Got to get it? No; the superintendent of the dock is the Board's agent, and they deal with the Superintendent..

Q. The ship owner deals with the superintendent; he goes to the superintendent and asks him if he can put his ship on and the superintendent says he may, and that is the end of it, is it?

A. Yes.

Q. And the Board know nothing about it?

A. Well, I wont say that. They are very liable to know something about it, some of them. There are seven of them.

Q. That is all right; now they are not consulted as to whether that ship shall go on the dock or not, are they?

A. No, not necessarily.

Q. Well then, all that is done is, the ship owner comes along and says, "I want to put my ship on the dock," Mr. McIntosh says, "Yes," and she goes on; isn't that right?

A. Yes.

Q. And it might be that the members of the Board would not know anything about it?

A. That might be.

Q. Yes; and they would not be required to know, would they?

A. No.

Q. Mr. McIntosh would not ask of them whether

it should go on, or not, would he?

A. No.

Q. And as a matter of fact, Mr. McIntosh controls the whole business of receiving and discharging the ship from the dock; is that right?

A. Subject to the rules laid down by his superiors.

Q. Yes, but he does not ask the Board anything about it?

A. No.

(Witness excused.)

The case in chief on behalf of Libellant was here rested.

THE FOLLOWING EVIDENCE WAS THERE-
UPON INTRODUCED ON BEHALF
OF CLAIMANT:

CHARLES P. DOE was produced as a witness on behalf of Claimant, and, having been sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMITH):

Q. What business are you in, Mr. Doe?

A. Steamship business, transportation.

Q. How long have you been in it?

A. Twenty years.

Q. Where have you been in business?

A. In San Francisco with headquarters, but doing business all over the Pacific Coast.

Q. Have you ever had any business in Portland?

A. I have.

Q. For what length of time?

A. About twelve years ago, our first business here.

Q. You are the present owner of the steamship George W. Elder, are you?

A. Yes, sir.

Q. Were you in Portland about the time that this ship was put on the dry dock?

A. Yes, sir.

Q. Had you seen the ship before she was put on the dry dock?

A. Yes, sir.

Q. Where had you seen it?

A. On the rocks at Goble.

Q. What was her condition then?

A. Wrecked.

Q. How long had she been there, do you know?

Mr. FLANDERS: This I object to as irrelevant and immaterial.

A. I first saw her shortly after she was wrecked.

Q. When was that?

A. In January, 1905, I passed there on one of our vessels a few days subsequent to the wreck, and saw her at frequent intervals from that time until the time that she was raised.

Q. Well, do you know anything about what was done by the owners or the underwriters concerning the ship?

A. The underwriters made an ineffectual attempt to raise her and gave it up as being impossible to be done.

Q. Do you know anything about that abandon-

ment by the underwriters, and sale of her?

A. The underwriters abandoned her and sold her at auction.

Q. Do you know anything about the condition of the ship at that time as to how far she was out of water?

A. The amount of the vessel that was out of water varied a great deal with the height of the water in the river. When the water was high the vessel was practically submerged, but when the water was low of course there was quite a percentage of the vessel above the water.

Q. Were you present when she was raised, or when she was being raised?

A. Yes, sir.

Q. And who did this work?

A. Under contract a man by the name of Baker, from Detroit, Michigan.

Q. For whom?

A. For the owners.

Q. Who were the owners?

A. At that time it was Mr. J. H. Peterson and myself. That last answer I would qualify by saying that our interests did not apply until the vessel was actually raised. We bought her subject to her being raised.

Q. That is, your interest?

A. Yes. So of course I was there representing our company and myself at the time that she was raised. But as soon as she was raised and at the dock, why then we became owners in the vessel.

Q. When was she raised?

A. The latter part of May, I think about the 20th or 21st, she was raised after quite a number of prior attempts.

Q. The underwriters had made an attempt to raise her, too, had they?

A. Prior to the time we owned her at all, or bought into her at all, shortly after she went on the rocks.

Q. Do you know whether the original owners of the ship had made any attempt to raise her, or not?

A. Not to my knowledge, except through the underwriters.

Q. She belonged to the O. R. & N. Company, didn't she?

A. Yes. It is my understanding they abandoned her as soon as they found she was badly damaged and turned her over to the underwriters who themselves tried to raise her.

Q. Now, she was raised, you say, about the 21st; what was done with her then?

A. She was beached for a couple of days just opposite the rocks at Goble to make some further repairs, and then moved up to the dry dock at St. Johns.

Q. That was the 21st or May, 1906, instead of 1905, wasn't it?

A. Oh yes, 1905 she was wrecked, and she was raised the following year.

Q. Now, what was done with her when you got her up to the dry dock?

A. She lay for several days alongside of the dry dock wharf and was then hauled into the dock and floated.

Q. Were you present?

A. Nearly all of the time, yes, sir.

Q. Now, what was the condition of this boat when she was brought there as to having a hole in her, or anything of that kind?

A. She had a very large hole.

Q. Where?

A. About eighty feet, between eighty and ninety feet abaft of the stem.

Q. How long a ship was she?

A. Well, that record will show the exact length. I speak from memory: About two hundred and fifty or sixty feet long, what is called official measurement. She is really about two hundred and sixty feet long in extreme length, figuring on the deck.

Q. Now, was this hole visible, her condition, before she was put in the dry dock? Could you see it or would you know the condition of her and where this hole was before she was put in the dry dock?

A. The hole itself could not be seen, but the effect of the hole, through the shoving up of the superstructure was apparent to the eye.

Q. What was the condition of the superstructure?

A. It was humped up immediately over the place where she struck the rock; the bottom of the ship had been pushed up into her and that in turn pushed up all of the superstructure.

Q. Now, just tell how the rock had affected the

ship, how it had gone into the ship; what was the shape of it?

A. Well, the rock was apparently a very large one, and the ship had settled right on top of it. The rock was probably half as large as this room, and the vessel had settled right on to this rock, and the top of the rock had simply pushed its way right up through the bottom of the ship, carrying up the keel, frames and plates, stanchions and deck beams, and everything with it, as the weight of the ship settled down on the rock, and we had to lift this vessel off of the rock high enough to float it clear of it, and then we kept it in that position until she went on the dock.

Q. Then you say it was plainly visible where the hole was before she went on the dock?

A. You could see by the eye exactly where the hole would be underneath, by the way in which the superstructure had been pushed upwards, showing that the damage was directly underneath where this was.

Q. Was that such that a man who was accustomed to handling ships and managing ships, would recognize that immediately, or not?

A. Immediately; anyone to look at it could tell by the eye where the accident, or where the damage had taken place.

Q. Now, how was this ship put on the dock, as to location on the dock?

A. She was pulled as far in to the dock as possible, in fact, right up against the forward part of the dock.

Q. And where did this hole, this damage come in reference to the partitions and sections of the dock?

A. It came right between sections numbers 1 and 2. The opening in the hole of the ship was right over the division between the two pontoons of the dock.

Q. Did the owners have anything to say, or give any direction about the placing of this ship?

A. No, sir, not to my knowledge. The matter was entrusted to the dock master.

Q. And what is the custom about docking ships? Do the owners have anything to say about the location of the ship on the dock?

A. I never heard of it being done. It is possible that an owner might offer suggestions, but it is not the practice or custom to do so. The vessel was turned over to the docking company, who assumed the responsibility of successful operation.

Q. Now, were you present there after the vessel was finally on the dock, or finally docked?

A. I was there at the time the dock was pumped out and the vessel raised.

Q. Now, what was her condition as to whether she was in line or not?

A. She was not in line.

Q. How was she after the cement and other material that was put in her was taken out; was she staunch, as far as moving about,—the separate parts of her?

A. The after part of the vessel was perfectly rigid; the part that was forward of the broken part was somewhat flexible, on account of the broken part had lost its rigidity and any motion of the dock would just slightly move the boat at this point where she was near-

ly broken in two.

Q. She was nearly broken in two, then, was she?

A. Very nearly broken in two, yes. Had she not been a remarkably well built ship, she would have been broken in two when she lay on the rock at Goble, but she held together all right.

Q. She covered two pontoons, or three?

A. Three.

Q. And were these pontoons rigid and stationary, or did they move about?

A. They each had a slight motion where they were attached one to the other; they were not absolutely rigid.

Q. What effect, if any, did the movement of these pontoons have upon the repair of the ship?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial.

A. When the concrete had been taken out of the vessel which was used in raising her, and all of the old material had been cut away, the vessel herself was then practically in two parts. There were only some small parts of the upper work attaching the bow to the stern. Then when we began to fit the new material in, to take up the place of the old which we had taken out, we found it was very difficult to do so unless the vessel could be kept rigid; and prior to having this new material, of course it was necessary to straighten up the bow of the vessel where it had become distorted. As I said before, it was somewhat out of line, and before any new work could be put in, all of the old had to be brought into

harmony, and it was very difficult to do that on the dock as it was then handled, or, as you may say, controlled. It is impossible to fit iron bolts and iron plates together unless it comes absolutely where it belongs, because there is no stretch or give or flexibility to the iron.

Q. How much movement up and down, or sidewise, did these two sections have?

Mr. FLANDERS: The same objection.

A. Well, the movement would vary largely with the conditions. The swell of a passing boat would probably only move them possibly an inch or more; but the greatest movement, or at least one of the greatest movements we had to contend with, was the movement of the dock itself through the inability to keep it properly ballasted. The dock being floating, any little variation of the floatability of the thing would have a tendency to cant it a little either to one side or the other. That they were trying to remedy by the adjustment of the ballast on the dock, but it was rather a difficult job, or appeared to be at least to those in charge.

Q. Now, how much time, if any, was lost on account of this arrangement or failure to bring the dock into proper position?

Mr. FLANDERS: The same objection.

A. Well, So far as my knowledge goes about two weeks was occupied in an effort to get the dock into line. It was put in line several times during the two weeks, but the dock people could not seem to hold it there. It would get out of line again, and the result

finally was that we never did get it in line, and the vessel is slightly distorted now, but not enough to materially injure the ship herself. It is no material defect in the vessel, but she is not absolutely true.

Q. Now, you say you think you lost two weeks' time by their failure to keep this dock in line?

A. About two weeks' time, roughly speaking; probably it would exceed that a little bit. If all the delays were taken into consideration, approximately fourteen working days, I should think, would cover the actual delay.

Q. Now, do you know whether this dock was used for other vessels during the time that the Elder was on there?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial.

A. There were several vessels docked on the other two pontoons during the time that we were there.

Q. When this vessel was being docked was anything said about why she was put up so far?

Mr. FLANDERS: Said by whom?

Mr. SMITH: By McIntosh, or anybody in charge of the dock?

A. Not to my knowledge.

Q. Now, have you examined this dock and been about this dock lately?

A. Yes, sir, frequently.

Q. And have you noticed the working of the dock, whether or not it stays in alignment, or not, at the present time?

Mr. FLANDERS: I object to that as irrelevant and immaterial.

A. I have.

Q. What is the fact about it?

A. It does not stay in line.

Q. How much variation will be in those pontoons?

Mr. FLANDERS: The same objection.

A. There can't be a very material variation between the ends of the different pontoons. The locking device is adequate for the purpose, but it does not hold the pontoons in line. They can shift in almost any direction, to a certain extent.

Q. The same condition was true, was it, at the time the Elder was put on there?

Mr. FLANDERS: The same objection.

A. Exactly the same. The dock was not intended to be rigid.

Q. Now, what did this locking device consist of? How was it made?

A. A very large timber carried between two what are known as bits at each end of the wharf, and locked with an angle iron key, or really an eye beam; it is an eye beam key. There is a play of from one to three inches between the timber which does the locking and the bits; so that each section of the dock has a certain amount of movement or flexibility, as you would call it.

Q. What kind of movement is it? What direction is the movement?

A. The movement is both ways, both up and down

and lateral. It can move either way, depending entirely on the power that is causing it to move.

Q. Would the condition of the water have anything to do with it on the outside?

A. You mean waves?

Q. Yes.

A. Oh yes; certainly.

Q. The rise and fall of the tide have anything to do with it?

A. With the rise and fall of the tide the dock would probably move as a whole, rigid, but with a wave, the part that was struck by the wave first would respond to the wave movement first, and as the waves traveled the length of the dock each succeeding pontoon would make the corresponding motion caused by the wave.

Q. Now, did many steamboats go past there?

A. Yes; the river traffic is quite considerable.

Q. And vessels and steamboats of considerable size?

A. Yes sir.

Q. How about the waves? How much wave do they make?

A. Well, it depends entirely on the speed. The fast boats, even though small, make much larger waves than large boats moving slowly. Sternwheel boats make a greater wave really than the ocean steamers would, on account of the speed they travel.

Q. How high a wave would they make about?

A. Well, I dont think that we ever measured any of the waves, but I should judge probably a foot between

the highest and lowest part of the wave, that is between the crest and hollow of the wave; that is, a pretty good size wave; which would create a considerable commotion in the water. The fast boats always affect the dock.

Q. How is that?

A. The fast boats always affected the dock. The workmen were always apprehensive of those fast boats as they went by.

Mr. FLANDERS: I object to this on the ground that it is incompetent, irrelevant and immaterial, all of this testimony relative to the waves and the effect of the waves on the dock.

Q. How many steamers went past there a day, do you think?

A. Well, that would be purely guess-work, but I would say thirty or forty both ways on the river, traffic between Portland and the mouth of the river, or up the Columbia, had to go by the dock, and sometimes it was every few minutes and then again there would be quite an interval without any. If I may make an assertion, I think it was the difficulty in trimming the docks themselves as much as it was the wave motion that caused this trouble. We suffered from both.

Q. What do you mean by trimming docks?

A. Keeping the floating power of the wharf or the dock evenly distributed between the different parts of the dock.

Q. How was that done?

A. The dock is built in compartments and in order to ballast the dock, or, in other words, to keep it in a

certain position, those compartments were each filled with just a certain amount of water, or they carried a certain amount of rock placed on the top to trim it. As this water would move more or less in the bottom of the wharf, some of those compartments would get a little too much into it and the compartment would have a tendency to tip that way (indicating) or the other way, as the case might be.

Q. And that was under whose control?

A. The dock master.

Q. You had nothing to do with that?

A. No, sir.

Q. Now, were you about there during the time the vessel was being repaired?

A. Yes, sir, practically all of the time.

Q. How about the dock superintendent McIntosh; was he there all the time?

A. No; there would be quite long intervals that we would not see him.

Q. Wouldn't see him at all?

A. Wouldn't see him at all.

Q. In his absence who would have charge of the dock?

A. The dock foreman; I think his name is Anderson.

Mr. FLANDERS: Johnson?

A. Yes, Johnson.

Q. And what about his authority? Did you ever say anything to him about having authority to arrange the dock?

A. In the early part of the work Mr. Johnson said that he did not have the authority which he would like to have. In other words, he thought he could accomplish what we wanted if he had his own way. He said that he was not altogether the boss. Later he stated that he had been told to go ahead and do it anyway that suited him best, and after that we made much better success.

Q. Now, when you came to actually put in the repairs, the plates, and put in the keel of this ship, just tell what trouble you had about keeping the dock in line.

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial.

A. Well, you will understand that there was a section of the keel of the ship which is a perfectly straight bar of iron, somewheres in the neighborhood of forty feet long, which had to be cut and fit, and it had to join on the after part of the vessel, which was rigid, and also make a joint on the forward part, which, on account of the moving of the dock,—it was movable slightly,—and we had to make a perfect joint in the moving end; it was difficult to do; that was a very difficult thing to do, because the dock had to be held in one position for quite a long time to enable that bar to be put in there and properly fitted and riveted, and then the corresponding frames put across, and that is where our principal difficulty came, in getting the dock to remain in one position long enough to do that; and then after it was done it would not be a good idea for the dock to move much, because it would destroy our fastenings and also de-

stroy the proper alignment of the ship.

Q. Now, suppose this vessel had been put on the dock so that the hole or opening had been placed on one of the pontoons and not over the opening between the pontoons, what effect would it have had on the repairs of the ship?

A. Well, it would have been infinitely better, so far as the repair is concerned, because when once the two parts of the vessel had been put into line and wedged and shored there, they could not have moved. Any slight movements of the parts of the dock away from the break would not have affected the point at the break, and when they were put in proper line then they would have remained there. The broken part of the ship acted a good deal like the bending part of a hinge when it was between the two wharves, and naturally the boat had to follow any motion the wharf made, whereas if the broken part had been put in the center portion, it would have had a sound footing on each end of the boat instead of the broken part, which would have held it steady.

Mr. FLANDERS: I move to strike out the question and answer on the ground that it is incompetent, irrelevant and immaterial, and not within the issues made by the pleadings.

Q. Now, will you describe the manner of holding this vessel on the dock with the keel blocks and the bilge blocks?

A. You refer to the manner in which this vessel was docked?

Q. Yes.

A. The vessel was hauled by lines in position oc-

cupying the center of the wharf, the center of the dock, so that when the dock is raised she would be exactly in the middle of it, and at this point is arranged, consisting of keel blocks some three or four feet apart the whole length of the dock, the dock is pumped out until the dock itself comes up and is touching the ship the full length on the bottom; then they have some blocks which are called bilge blocks; those are moved by the use of tackles up until they touch the sides of the vessel all along from one end to the other. Those are to keep her from tipping either to one side or the other as the dock raises. When these are adjusted, or at least have been pulled in until they strike the sides of the ship, the remainder of the dock is floated and the vessel comes up square. That is the ordinary method, and, infact, the only method.

Q. Now, it has been said here by Mr. McIntosh when a vessel is put on the dock and these keel blocks and bilge blocks were adjusted, that that made the dock absolutely rigid and solid; what is the fact about that?

A. Well, the only rigidity to this dock that could be caused by a vessel being on it was merely the weight of the vessel, which would act to a certain degree to stiffen the wharf or dock, but not sufficiently to prevent them from moving, however. Of course, the heavier the weight which is pressing down on these docks, why naturally the more difficult it is for the dock to move, yet it does not prevent it moving.

Q. Have you examined or noticed this dock with a vessel on lately?

A. Yes.

Q. Is there any movement of the dock with a solid vessel on it?

A. Certainly; there always is.

Q. What was this vessel doing? On what route was she employed at the time she was wrecked?

A. Between Portland and San Francisco.

Q. As a passenger steamer?

A. Freight and passenger carrier.

Q. Freight and passenger carrier. Now, from the time of her being wrecked was she in any kind of business until after she was repaired by you?

A. After her wrecking?

Q. Yes.

A. No, sir; she was a total wreck.

Q. And do you know about what date, if at all, her papers were surrendered?

A. I could not tell you the exact date; the Custom House record would show; but it should be as soon as possible after the accident. The law calls for a report of that kind from the master and owners, and it is usually made within a few days, or as soon as can reasonably be done after the accident or the wreck.

Q. Was she in any kind of commercial business from the time of this accident up to the time she was finally enrolled again by you, or listed?

A. No, sir, no business whatever.

Q. Was she carrying on any business of any kind?

A. None whatever.

Q. And when did she go back into business?

A. As soon as she was enrolled.

Q. About when was that, do you remember? The 21st of November, 1906, this says (Proctor referring to Libellant's Exhibit).

A. Well, that is about right. I was going to say the latter part of November. I was trying to recall the day, or the date.

Cross Examined.

(By Mr FLANDERS).

Q. You are the present owner of the Elder, are you, Mr. Doe?

A. Yes, sir, Mr. Flanders.

Q. Mr. Peterson bought her at the Underwriters' sale, didn't he?

A. I believe so. We bought from Mr. Peterson.

Q. Yes; and prior to the raising of the Elder you had made some kind of an arrangement with Mr. Peterson whereby you would secure an interest in the vessel, provided she was successfully raised and put on the dock?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. Prior to her running ashore on this rock at Goble she had been regularly engaged out of Portland in the Passenger trade, that is in the freight and passenger trade, between Portland and San Francisco, had she not?

A. Yes, sir.

Q. Had been on a regular run?

A. On a regular run.

Q. And after she was purchased by Mr. Peterson

and yourself and repaired, she went, and has continued to be, on a regular run, has she not, between Portland and California points?

A. Yes, sir. Our route extends as far South as Los Angeles. We didn't put her on exactly the same route as the other people did; we cover a little more territory.

Q. I know, but you have had her on a regular run?

A. Yes, sir.

Q. With regular scheduled sailings?

A. Regular scheduled sailings.

Q. Were you in Portland during all of the time the Elder was under repairs on the dry dock?

A. Practically all of the time. I made one short trip to San Francisco during the time.

Q. And you yourself were down at the vessel how often?

A. Every day during the time that I was in Portland. In fact, I spent practically the whole day there during all of the time she was under repairs, with the exception of the interval I made a business trip to San Francisco.

Q. Were you there when she was docked?

A. Yes, sir.

Q. And there when she was floated?

A. Yes, sir.

Q. And when you were in Portland during the time of her repairs, you visited her every day?

A. Every day. That was my business in Portland

at that time; it was to look out for these repairs.

Q. You say Mr. McIntosh wasn't down there all the time; was he down there every day?

A. No.

Q. At any one time how long was he away from there?

A. Well, that would be very hard for me to answer, Mr. Flanders. It is possible that he would come to the dock and I would not see him, but at the same time my enquiry among the men there regarding him was that he had not been there during the day, and as I didn't see him of course I took it for granted that he had not been there.

Q. Well, would you say that he was absent from the dock at any time more than one day?

A. Oh, yes, I should say there were.

Q. More than two days?

A. There were times for three or four days he would not show up, as far as my knowledge would go, and I was there among the men and attending to the business of repairs all day long from early in the morning to late at night.

Q. Mr. Johnson was there all the time, wasn't he?

A. I think every day, practically every day.

Q. Before the Elder was put up on the dry dock, you knew the character of the dock, did you not?

A. Yes, sir.

Q. And it is a floating sectional dock of the ordinary type, is it not?

A. All floating sectional docks are of that type. That is what makes it a floating sectional dock.

Q. There were no defects or imperfections in this particular dock, were there?

A. No, sir, none except what would exist in that type. They are all alike.

Q. Now, before the Elder was put on the dock you knew the dry dock rates, did you not?

A. I don't think I did, Mr. Flanders. I don't remember of ever having received the circular, but there was one in existence and I could have found out what they were if I had wanted to.

Q. Yes; you knew that the Board had a schedule of their rates?

A. Yes, I certainly did.

Q. You say you think that the repairs to the vessel were delayed about fourteen days, owing to the inability to keep the dock in line?

A. I think that was about the time which we lost. We considered it so at the time, and I have had no reason to change my mind since.

Q. When did that delay occur?

A. Let me see. I think I made a note of it. (Witness refers to memorandum book). Yes, it extended from the latter part of June until about the middle of July. The fact of the boat being out of line in the early part of the work while we were taking out the cement didn't cut any figure at all; so far as the work is concerned she could just as well have remained that way as the other, but it was when we began on the new construction it was necessary to put the ship in line, and that was in the early part of July, and included a few

days the latter part of June.

Q. Now you let your contract for repairs when, Mr. Doe?

A. The contract was made by Mr. Peterson, and I didn't have anything to do with the signing of it, so I could not tell you exactly when it was let.

Q. It was made in his name, was it?

A. Yes. At that time the title, such title as there was, to the wreck was in his name.

Q. Now, what was the cause of this delay?

A. On the dock?

Q. Yes.

A. The inability to get the forward section of the Elder in a true line with the after part.

Q. And that was because the two sections of the vessel were out of line?

A. Yes, sir.

Q. In other words, the dock had to be adjusted to the shape of the ship, to a certain extent, didn't it,—to the alignment of the ship?

A. Yes. If I had two books of the same size. (Witness took two books and illustrated). This would represent the after part of the vessel, the larger portion, and the smaller portion being forward; and this would be the break, and this break was directly over two sections of the dock. This forward part had to be brought in direct line, both as to perpendicular and in every other way with the after part, and that could only be done by trimming or ballasting this forward part of the dock with the ship. But we had it there and would have kept

it there but this part of the wharf would keep moving a little bit; would keep twisting around a little bit; and, of course, we couldn't get anything to go in between there (indicating); the difference of a very small fraction of an inch would affect the work, and that was the difficulty.

Q. This is a difficulty which would exist in a floating dock because its different sections had a certain amount of floatability that would not exist in a graving dock where the ship, or where the dock itself was perfectly rigid, wouldn't it?

A. The graving dock is much superior. This particular trouble, however, was caused by the fact that the opening in the ship and the opening between the sections of the dock coincided. Had they been shifted a little one way or the other, the trouble would have been obviated and this dock would have been then practically as good as any other kind for that work.

Q. You think that, do you? Of course, you are not a docking man yourself, are you? You have never operated a dry dock?

A. No, I never operated a dry dock; no, sir.

Q. Do you criticise Mr. McIntosh's methods as to the manner in which he docked the Elder on this occasion?

A. Well, I criticise his location of the Elder on the dock. The actual docking part, that is the part wherein he floated her, I don't know that it is subject to very much criticism. I think it could probably have been better done; but there is no objection, however, to

that. The place he put the ship, however, was about as unfortunate as he could have gotten it.

Q. Did you object to it at that time?

A. No.

Q. You could tell at the time, couldn't you, that the hole in the Elder would come right over the two sections of the dock?

A. Oh, yes; yes; that was apparant all the time.

Q. And this delay occurred between the latter part of June and the middle of July.

A. Yes, sir.

Re-Direct Examination.

(By Mr. SMITH):

Q. It Mr. McIntosh had stayed at the dock and attended to his business, how would that have affected your delay?

A. It would have shortened it very much, because if he had been there we probably would have had a better,—well, we would have got better action on the part of the other dock men. What I want to say is that McIntosh being absent left the dock employees without an executive head, and they did not seem to have the necessary authority to do things. They were looking for instructions from him, and as long as they didn't get them they were rather at sea. As I explained before, apparantly Mr. McIntosh gave his foreman down there authority to go ahead and do what was necessary, and then Mr. Johnson made much better progress in the trimming of the dock.

Q. What, as a matter of fact, can you say about

Mr. McIntosh's ability as a dock master or superintendent?

A. Well, that is rather a hard question to answer. Personally I hardly consider him a good dock man.

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial.

Q. Now, what would have been the effect on the repairs of this ship if you had had a competent man in charge of the dock?

Mr. FLANDERS: The same objection.

A. A competent man would have taken hold of the question of trimming the docks the moment that he saw they were out of line, and to my knowledge it should not have taken more than two or three days to have properly adjusted and gotten everything in shape, but as it was through the lack of authority or executive head at the dock, the work kind of dilly-dallied along and it just took that much longer to get it along. What it lacked was leadership, apparently.

Q. Now, what experience have you had with docks and docking ships, Mr. Doe?

A. On practically all of the docks on the Pacific Coast, and quite a number of times on each dock.

Q. Well, about how many times have you docked ships?

Mr. FLANDERS: That is, on floating docks or graving docks?

A. We have used both kinds, Mr. Flanders. I should say a hundred different occasions, probably, within the twenty years.

Q. And where have you used these docks?

A. In San Francisco, Portland and Seattle, where practically all of the docks are situated that we have.

Q. Aren't there docks at Los Angeles and San Pedro?

A. There are none. There are small marine railways there, but we have never utilized them.

Q. It is claimed there was some damage done to keel blocks, I think, or bilge blocks; was there anything about this vessel that would damage a keel block any more than the ordinary vessel?

A. I don't see how she could damage keel blocks any more than ordinary vessels. There might be some little damage to or loss of what are termed as bilge blocks, on account of some of them having to be removed at the broken part and rebuilt again in order to better fit her after she was out of water. There could be some slight damage there; but the keel blocks, I don't know of any particular reason why any should be damaged.

Q. Do you know whether any damage to either the keel blocks or bilge blocks in this case—(to Mr. Flanders) which was it you claimed, keel blocks or bilge blocks?

Mr. FLANDERS: I think it was bilge blocks. Here is what Mr. McIntosh says: "It came about from the broken keel cutting into the keel block and the vessel being so much out of shape, it made the bilge blocks so that they had to be split out and destroyed and new ones put in their place."

WITNESS: Well, that is practically what I said. There might be some damage to the bilge blocks; the keel blocks, however, should have been intact anyway. It is possible in docking almost any ship that is in a damaged condition, that after you have taken her out of the water you will see things that you could not see before she came out, and you may have to move a block here and there, and as they are frequently wedged in very tight on account of the weight of the vessel bearing down on them you have to take and split out a portion of them. It is usually a piece of pine or something of that kind, practically of no value, and the block is again rebuilt and refitted and put back again. Sometimes if that is very excessive it is charged against the ship. Ordinarily the dock has those things there, and it is considered a part of the wear and tear.

Q. How much was the cost of the repairs of this ship?

A. The total cost?

Q. Yes.

A. You refer to the equipment, cabin accomodations, and everything else?

Q. Yes.

A. A trifle over a hundred thousand dollars.

Q. Now, what was the cost of raising the ship?

Mr. FLANDERS: That includes her raising, doesn't it,—hundred thousand dollars?

A. No; that includes the contract for the hull repairs, together with the equipment, oil tanks, and everything that were put inside or outside of the contract

with Mr. Baker.

Q. What was the cost of raising her?

A. I do not know. That was a contract between Mr. Peterson and Mr. Walker, which was a part of their private affairs, and we didn't participate in the raising expense.

Q. You don't know how much that cost?

A. No, sir.

Q. Now, what was the value of any additional repairs or equipment put on this ship, different from what she had prior to her being wrecked?

A. Well, we made some considerable changes in her cabin equipment to better accomodate the traffic. In other words, we modernized her passenger accomodations, and we also equipped the vessel with an oil burning appliance.

Q. Yes; that is what I referred to particularly.

A. Oil burning appliances and the tank. The total cost of the oil burning apparatus was in the neighborhood of fifteen thousand dollars, and that is included as a part of this hundred, of which I have previously spoken.

Q. Now, what would the vessel be worth as new as she was before she went on the rocks?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial.

A. You mean to build a new ship?

Q. No; I mean when she was alive before she went on the rocks what would she be worth as she was in business then?

A. I should say about one hundred and seventy-five thousand dollars. She was a much better vessel after we had made our repairs than she was prior to the accident, as we renewed and restored a great many of her parts that showed evidences of former wear. In other words, when we finished our repair and installed the oil plant and put in this new beam, which was occasioned by the accident, the vessel was then in better physical condition than she had been for probably fifteen or eighteen years, and I should say with a valuation of about two hundred and twenty-five thousand dollars. That of course includes the oil burning apparatus and all the other modernizing which we did to her. It was our opportunity, and of course we made the best of it.

Re-Cross Examined.

(By Mr. FLANDERS):

Q. Mr. Doe, after her repairs were completed she had the same boiler, did she not?

A. The same boiler, yes, sir. We didn't change those, except to repair them. I presume we spent about two thousand dollars on the boilers, in making some betterments.

Q. The same engine?

A. The same engine, yes, sir, with the exception of some of the working parts that we renewed that had been worn pretty well by her former owners, I suppose to the extent of perhaps twenty per cent.

Q. The ship herself was not dismembered in any respect, was she?

A. No.

Q. She had the same model afterwards?

A. The same model exactly, yes, sir.

Q. All that you did was to repair the damaged parts of the ship and overhaul the machinery; you had to take it apart, of course, to clean it?

A. Yes.

Q. And put it back, and renew any worn or damaged portions and remodel the cabin accommodations of the vessel and put in this oil tank and supply the lost equipment; that about covers what was done on her, does it not?

A. Well, we did a little more than that. We took out her entire ceiling on the inside. Of course, you understand all vessels are ceiled on the inside, which is not exactly called for. We took out every particle of wood that was in the old George W. Elder except the very upper deck; we renewed the entire thing.

Q. That was because she had been in the water, was it not?

A. Partly that and partly because the old wood work had been living about as long as it should on a ship you intended to take passengers on, and to make a thoroughly good job, a practically new job, we went to the root of everything that we could find that looked as though it might have deteriorated, and the vessel was thoroughly rebuilt, as you might say, from top to bottom. However, it is the same old lines, the same old model and the same old ship.

Q. The same old name, even?

A. We used the same name, yes. We thought there was nothing wrong with it.

(Witness excused).

Mr. SMITH: Now I want to introduce this copy of your log.

Mr. FLANDERS: All right.

Whereupon said copy of log was received as an exhibit on behalf of Claimant, marked CLAIMANT'S EXHIBIT 2, and is returned herewith as a part of this record.

Mr. SMITH: And I want to introduce also this copy of your workmen's time, from May to September.

Mr. FLANDERS: All right.

Whereupon said copy was received as an exhibit on behalf of Claimant, marked CLAIMANT'S EXHIBIT 3, and is returned herewith as a part of this record.

Mr. SMITH: And the cancellation of the enrollment or registry of the ship, abandoned by the Underwriters. It appears in the Custom House, I suppose. I had better make a copy of that.

Mr. FLANDERS: You had better have a copy of that; yes, sir.

Mr. SMITH: You want me to get that?

Mr. FLANDERS: Well, I don't know what the records are down there.

Mr. SMITH: Now, do you want me to get a certified copy?

Mr. FLANDERS: Oh, no.

Mr. SMITH: Well, I will have a copy of it made and introduce that.

FRANK WALKER was next produced as a witness

on behalf of Claimant, and, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMITH):

Q. State your name, age, resident and occupation.

A. Frank Walker; forty-five; occupation, marine surveyor, consulting engineer and naval architect, residing in Seattle.

Q. How long have you been in this business, Mr. Walker?

A. I have been practicing it for over ten years.

Q. What experience have you had in this line, Mr. Walker?

Mr. FLANDERS: I don't dispute Mr. Walker's qualifications.

WITNESS: You wish me to answer that?

Mr. SMITH: Yes, go ahead.

A. Well, I have had a life long experience of designing, building, repairing and handling vessels generally.

Q. Any experience in repairing vessels on dry docks or off dry docks, but particularly on dry docks?

A. I have had charge of one or two dry docks in my time, superintendent of construction and repairs at various places.

Q. Where have you had charge of dry docks?

A. I had charge of the quarter master dry dock and superintendent of repairs and construction for three years, on Puget Sound.

Q. Quartermaster of dry dock,—Government dry dock?

A. No; quartermaster for a private concern.

Q. Oh, yes; on Puget Sound.

A. Yes.

Q. Where else have you had charge of a dry dock?

A. In Singapore I had practically the same position?

Q. Did you have anything to do with the repairs of the Steamship Elder?

A. I was employed to draw up specifications for the making of the repairs and to supervise the repairs during the process.

Q. Did you see the ship before she was put on the dry dock?

A. No, sir.

Q. When did you first see her?

A. Well, you mean on the dry dock?

Q. Yes.

A. Oh, I could not swear to the date.

Q. Well, about what time?

A. Sometime in June, the early part of June.

Q. 1906?

A. 1906, yes.

Q. Now you say you made the specifications?

A. Yes.

Thereupon Proctor for Claimant offered the specifications referred to, and the same were received in evidence on behalf of Claimant and marked CLAIMANT'S EXHIBIT 4, and is returned herewith as a part of this record.

Q. Now witness is shown plat marked Claimant's Exhibit 5, and asked to state what it is and what it represents.

A. This represents the George W. Elder on the first three sections of the Port of Portland dry dock.

Q. Who made it?

A. I made it.

Thereupon Proctor for Claimant offered said plat in evidence and the same was received and marked CLAIMANT'S EXHIBIT 5, and is returned herewith as a part of this record.

Q. Now witness' attention is called to the front pontoon No. 1; state what was the condition of that pontoon at the time of the Elder being put on the dry dock?

A. At the time I saw the Elder.

Q. Yes.

A. At the time I saw the Elder on the dry dock, pontoon No. 1 was considerably down forward, at the upper end.

Q. About how much?

A. At that time that I first saw it I didn't measure it, but at one time during the course of repairs, about eighteen inches out of line.

Q. Now, does this drawing represent accurately the condition of the ship as she was on the dock?

A. No, it is not accurately the condition; it is approximately the condition.

Q. Approximately the condition?

A. Yes.

Q. It shows approximately her location on the dock?

A. Yes, sir.

Q. And the position of the pontoon when you saw her?

A. Yes, sir.

Q. Does this drawing also show the condition of the character of the fastenings of these pontoons together?

A. It shows the system of securing them together, yes,—one view of it.

Q. Do you know how much play there was between the upper and lower parts of these bits?

A. No, I could not say how much, an inch or so. There was a certain amount of slackness.

Q. Suppose there was a play of an inch at each bit, how much would that allow the dock at the other end to fall down or rise up?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial, and not within the issues made by the pleadings.

A. That would allow a very serious deflection at the other end.

Q. About how much, do you think?

A. Well, I don't know the distances between these points, or else I could tell you exactly.

Q. The pontoons are eighty feet long?

A. No, but I mean the distance of these points here (witness indicating on plat).

Mr. C. L. JOHNSON: They are four feet.

WITNESS: Four feet apart.

Mr. C. L. JOHNSON: But that would have no bearing at all on that.

WITNESS: It would let the dock tip over twenty inches, that pontoon tip over twenty inches.

Q. And was there any fastening on the front part of this pontoon?

A. Fastening? What do you mean?

Q. To keep it from moving up and down.

A. The same fastening on pontoon No. 1 as on—

Q. (Interrupting) I know, but the end?

A. No; the end was floating.

Q. Yes, I see; it could go up and down?

A. Well, that was the loose end, pontoon No. 1 and pontoon No. 5 are loose ends.

Q. Yes; and it could go up and down without any hindrance at all?

A. As much as the guys on the side of the dock will allow.

Q. Who had charge of this dock when you were there?

A. Mr. McIntosh.

Q. You were not there when the ship was docked at all?

A. No, sir.

Q. Now, what was your business there?

A. Well, I explained it. I was employed by the owner to prepare specifications for the repairs to the vessel, and to supervise them during the course of repairs.

Q. Then you were there during all of the time that the vessel was being repaired?

A. All of the time that the vessel was being repaired, excepting one or two days that I visited the Sound occa-

sionally; practically all the time.

Q. Now to whom was the contract let to repair the ship?

A. The Portland Ship Building Company, I think was the name of the firm. Mr. Albert Kelly was president.

Q. And Mr. Rogers, was he there also?

A. He was there also, or one of the officers, I am not sure which.

Q. Yes; Mr. Kelly and Mr. Rogers were both there, were they, during the repairs?

A. Yes, all the time.

Q. Do you recollect when these repairs commenced?

A. No, not to the day; about the 26th of June, I think. That is, under the contract. There had been certain work done previous.

Q. I see; that was under your specifications?

A. Yes, sir.

Q. Now, did you have any trouble in getting this dry dock in shape to make these repairs?

A. Yes; there was considerable trouble in getting the dock in shape.

Q. What was the cause of the trouble?

A. The cause of the trouble was the inability to handle the forward, the number 1 section of the dock.

Mr. FLANDERS: I object to all of this testimony, on the ground that it is incompetent, irrelevant and immaterial, and not within the issues made by the pleadings.

Q. Did you make any effort to have the forward pontoon put in line?

A. I made a number of requests to have the forward pontoon put in line.

Q. Whom did you request?

A. The dock master.

Q. McIntosh?

A. McIntosh, yes.

Q. What was the results of your request?

A. Principally a stand-off, as a rule.

Q. How about Mr. McIntosh's presence at the dock? Was he there all the time?

A. No.

Q. How much of the time was he there?

A. Oh, it is very hard to say; some days he would not be there at all.

Q. How many days were there that he was not there?

A. I could not tell you how many days he was not there; I didn't keep count.

Q. Well, was it a small part of the time or a large part of the time?

A. Oh, a large part of the time he wasn't. He would come for an hour or so and then dissappear.

Q. And were you delayed on that account?

A. Well, we were delayed practically by his inattention to the dock.

Q. Did you have any conversation with Mr. Johnson about putting this dock in shape?

A. Oh, yes.

Q. What did you tell Mr. Johnson?

A. I asked Mr. Johnson if the dock could not be put into shape for us on numerous occasions.

Q. And what did Mr. Johnson say?

A. He said it was up to Mr. McIntosh.

Q. Did Mr. Johnson refuse to do anything, except by direction of Mr. McIntosh?

A. Mr. Johnson was perfectly willing to do anything and everything that Mr. McIntosh directed him to do, but not being in full charge of the dock he did not care to take the responsibility, I presume.

Q. What can you say about Mr. McIntosh's management of the dock, as to it being good or otherwise?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial, and not within the issues made by the pleadings.

A. Well, I only had experience in this particular case.

Q. Yes.

A. It was not very good, in my opinion.

Q. Do you think it was possible to put that dock in line immediately?

A. It was possible to put that dock in line at the first as well as at the last.

Q. Now how much time was lost in putting this dock in line?

A. In what way do you mean? Do you mean how much time was lost actually on the job?

Q. Yes.

A. In my opinion I estimate that about fifteen days' time was actually lost through the delay in putting the dock into line.

Q. Now, there was some work that was done on this

boat that might have been done off the dock, wasn't there?

A. Oh, yes; lots.

Q. What was the fact as to whether Kelly did work above the water line or above the line where the water would have been if the ship had been in the water, during the time she was on the dock?

A. He worked a great deal at work above the water line that could have been done with his vessel afloat.

Q. Now, what was the reason for the delay on account of the dock being out of line? Why was it necessary to get the dock into line?

A. It was absolutely necessary to have the ship's keel in perfect line before any of the moulds or templates could be made to the new part of the keel, keel plates, shell plates, frames, stringers, keelsons, etc.

Q. How much of the keel was out?

A. About forty-two or three feet.

Q. What other repairs besides the repairs to the keel and putting the plates on where the hole actually was made, was it necessary to do below?

A. Stem and plates, and then there was six or eight plates dealt with farther aft; and also the propeller,—a propeller job and rudder job.

Proctor for Claimant here offered in evidence a diagram which was received without objection, and marked CLAIMANT'S EXHIBIT 6.

Q. Witness is shown Claimant's Exhibit 5, and asked to state what it represents.

A. This is a rough sketch representing the way, in

which the bottom of the vessel is put together, showing the new part of the keel scarphed in, and the keel plate, the manner in which it is connected to the keel and the frame.

Q. Now, why is it necessary, Mr. Walker, to have the keel in line before you can go ahead with the work?

A. Well, until the vessel is straightened up and in true line, it is impossible to fit that part of the keel; it is impossible to lay out your holes; it is impossible to fit your frames; it is impossible to connect up your stringers, and it is impossible to fit the plates as they have to be fitted, butted, a close fit, and also the holes to allow the bolts to go through; it is impossible for the holes to go through unless the keels are in line.

Q. Now, how are those plates fastened into the vessel?

A. Rivited.

Q. And how are they placed, butted up together, or lapped over?

A. Fore and aft they are butted, and up and down they are lapped.

Q. And is anything put on underneath the plates to hold them together?

A. There is a butt strap.

Q. A butt strap?

A. Yes.

Q. And the rivets are put through the butt strap?

A. They are butt strapped to the plate, and through the frame and the plate and through the laps

of the two plates on the inside and the outside strakes.

Q. Now, after this dock was once put in line did they keep it in line?

A. No; the first time it was put in line I think it was on a Saturday afternoon it was brought into line; and on Monday morning again it was out of line; more water had leaked into the forward end. It was then that they began to get serious and straightened the dock.

Q. I see; about what date was that?

A. That I think was on July 16th.

Q. And how long after that was it before you actually got it in line so you could go to work on it?

A. Before the dock was absolutely satisfactory it was **August 18th.**

Q. Now what other work, if any, were Kelly and his men doing during that time?

A. Well, they were painting and cleaning and lining; cleaning out the aft holds, ceiling them, putting up cargo batten and laying 'tween decks; they were taking out dents in the ship's side; they were finishing up the work on the bows; they were finishing up the work under the beam, working on the propeller and the rudder.

Q. And was there any iron work done above the water line that might have been just as well done outside of the dock?

A. Oh, yes, a great deal of it.

Q. Then you say that from the 16th of July, they were from the 16th of July to the 18th of August get-

ting it in line; why do you say then there were only fifteen days lost?

A. Well, because had Kelly who had the contract, been able to use all of his men, he could have completed the work fifteen days sooner than he did owing to the other work going on at the same time. He was obliged to distribute his men,—not to distribute them but scatter his men and rush the other work waiting until he could get his moulds for the center part of his vessel; had his vessel been in line he would not have had to distribute his men over the work.

Q. Do you know anything about the condition of these compartments in this dock?

A. No.

Q. Do you know whether they are water tight or not?

A. No, I don't think they were water tight. It is a very difficult matter to find any wooden structure tight. I have had charge of wooden dry docks, and I never found a compartment tight,—never.

Q. What other work besides the iron work did Kelly do while this ship was on the dock?

A. Scaling, painting, carpenter work and machinist's work.

Q. This work might have been done just as well after it had gone off of the dock?

A. Oh, just as well.

Q. Was it any more expensive, or otherwise, doing it there?

A. More expensive to do it on the dock, as the

material had to be passed into the vessel through the pontoons.

Mr. SMITH: That is all.

Mr. FLANDERS: Now I move to strike out all of the testimony of the witness on the ground that it is incompetent, irrelevant and immaterial, and not within the issues made by the pleadings.

Cross-Examined.

(By Mr. FLANDERS):

Q. Mr. Walker, you say you were employed by the owner of the Elder to prepare these specifications and to supervise the repairs?

A. Yes, sir.

Q. To superintend the repairs; who was the man who employed you?

A. Well, Mr. Peterson was the name of the man that first employed me.

Q. You visited the Elder when she was on the dry dock some time in June first?

A. Yes?

Q. Can you give the date?

A. No; I haven't my notes with me today.

Q. Well, what was her condition when you visited her; had anything been done towards stripping her?

A. Oh, yes; they were tearing out, taking out the dirt and filth, the old cargo and taking out some of the cement, the mud, some of the ragged edges of the iron work.

Q. That had been started before you first went to the dock?

A. Yes.

Q. And you say then that the forward section was out of line?

A. Yes.

Q. And how much was it out of line then?

A. I can't tell you exactly at that time.

Q. Was it out of line in the manner in which Mr. Johnson described it as being out of line; that is, down at the front?

A. It was down at the forward end, yes.

Q. At the forward end, and up at the after end?

A. Up on one corner.

Q. And what caused it then to be out of line?

A. The fact of there being a gap in the keel of the vessel and the keel of the vessel not being true and a part of the vessel being gone. As Mr. Johnson described it, a part of the shell plate was missing.

Q. It was not out of line then through any imperfection of the dock itself, was it, but owing to the fact of the Elder being in the condition in which she was?

A. Well, for that class of a dock it was not defective,—not to the best of my knowledge.

Q. Now from the time you first visited the dock did you stay there continuously?

A. Daily, continuously.

Q. You visited it daily?

A. Yes.

Q. And you stayed there—

A. (Interrupting). Practically all the time. I was down there in the morning about 9 o'clock and used

to leave about four in the afternoon. I think that was usually my time to leave.

Q. You prepared your specifications of the repairs here in Portland?

A. Right here in Portland.

Q. And stayed in Portland while the contract was let for the repairs?

A. I did.

Q. And then were down at the dock practically every day from the time Mr. Kelly's company started to make the repairs—

A. (Interrupting). Until she went to sea.

Q. Yes, until she went to sea. In what way, Mr. Walker, was time lost by the contractor in his repairs?

A. Simply because the dock master didn't straighten up the dock as—

Q. (Interrupting). No; your answer is not the answer to the question that I am trying to put to you. In what was the delay,—not the cause of the delay, but in what was the delay?

A. Oh, I see. The delay was owing to the vessel being out of line. It was impossible to make his moulds and templets.

Q. When was he first ready to make his moulds?

A. He was ready to make his moulds along about July 13th or 14th; he could have made them sooner, some of them.

Q. Then as I understand it was not until July 13th or 14th that the fact that the dock was out of

line was a mater of delay in the repairs of the vessel?

A. It was delaying them from the very start in not being able to get the length of the new part of this keel.

Q. Why couldn' he get the length of the new part of his keel?

A. He could only get it approximately, because as the vessel was straightened up it would be longer.

Q. Well now, Mr. Walker, in your estimate of fifteen days' loss of time in the repairs of the vessel owing to the dock not being kept in line, how much of that fifteen days was lost up to July 13th or 14th?

A. I should say three or four days were lost up to that time.

Q. When was Mr. Kelly able to make his moulds?

A. Just as soon as ever the cement was out of the hold, or the vessel straightened up. He could make his moulds for the keel immediately.

Q. When was his vessel straightened up?

A. Finally straightened up on August 18th.

Q. You don't mean to say, Mr. Walker, that up to the 18th of August nothing had been done in the shape of making moulds? ..

A. Oh, yes; the plates had been ordered at approximate lengths and widths, and the keel had been ordered approximate lengths, and the stem had been ordered. These approximate lengths then left the fitting to do; he couldn't finally fit them until the ship was true.

Q. Now when did the keel get to Portland?

A. I could not say that positively.

Q. When did the plates get to Portland?

A. The plates arrived in Portland during the week ending July 16th, I think.

Q. Of course, he could not do anything with his plates until he got his keel in, could he?

A. Oh; yes, as long as his ship was in line.

Q. He could have?

A. Yes.

Q. Between the time the plates arrived in Portland and the 18th of August when you say the ship was gotten in line, what, if anything, did Mr. Kelly do on the plates?

A. Well, he worked on putting in the plates in the forward end, and he worked on the plates at the after end of the vessel, and did the preliminary work of his framing and plating amid-ship.

Q. He could put on his plates in the forward and after end of the vessel?

A. Yes.

Q. Did Mr. Peterson ever object, to your knowledge, to the fact of the dock being out of line?

A. Did Mr. Peterson?

Q. Yes.

A. Why, Mr. Peterson had a common kick all the time at everything in general.

Q. Did he ever object in your knowledge, or to your knowledge and in your hearing, to Mr. McIntosh, the superintendent of the dock?

A. Yes; he often objected to Mr. McIntosh.

Q. I mean to Mr. McIntosh?

A. Oh, Mr. Peterson? I didn't hear him talking to Mr. McIntosh.

Q. That is what I mean. Now, after the 18th of August what was actually done on the vessel?

A. The work progressed and was pushed along rapidly, plates were installed,—frames, plates, stringers, keelsons.

Q. The moulds had not been made prior to the 18th of August?

A. Some of them. All those that could be made were made.

Q. How many were they unable to make?

A. I could not say now.

Q. Now what else was there necessary to do in the shape of patterns, etc., other than the making of these moulds, in which there was any delay?

A. Well, the moulds and the making and drilling and punching of the plates was the delay,—riveting the plates in place; the work of installing the plates after they were cut from the patterns.

Q. You could not make the patterns until the ship was in line?

A. No; certainly not.

Q. And no work was done on the patterns until August 18th?

A. On certain of the patterns.

Q. Well, I mean on the patterns in the big break?

A. The patterns in the big break, the break in the keel?

Q. Yes; there was no work done on them until after August 18th?

A. Only as I tell you, the approximate dimensions were got out.

Q. And the plates ordered on those approximate dimensions?

A. You can't always order plates from the old ones, you see. We got the lengths and widths and thicknesses from the old ones, and approximate lengths.

Q. Now, what is this mould that you refer to,—the mould from the keel?

A. You would call it the pattern, I suppose; the templet, the paper pattern, for instance, if you made a paper pattern for getting out a piece of cloth with; you make a wooden pattern for a plate exactly where you are going to put this plate; that is a mould.

Q. And the keel would be shaped according to this pattern?

A. You have to make a pattern first for your scarphs, and your keel and get your exact length before you can cut your keel.

Q. Your keel is, of course, a piece of steel?

A. Yes, a bar.

Q. A bar of steel?

A. In this case it was a bar keel.

Q. Now, you have no complaint, Mr. Walker, as to anything that occurred after August 18th?

A. No, I don't know of any complaint after that.

Q. Now, isn't it a fact that this delay prior to the 18th of August was because the adjusting of this floating sectional dock so as to bring this wrecked vessel in perfect line, or line as nearly perfect as pos-

sible, was a very difficult matter?

A. Not at all. It was a matter of labor and common sense.

Q. You blame Mr. McIntosh's methods?

A. I certainly do.

Q. Yes. Now, if you had been in charge of that dock yourself, by what day would you have gotten the Elder into alignment?

A. That is a very peculiar question to put. I should certainly have stayed with it and done my best and taken suggestions from other people that knew a little about it, instead of leaving the thing with no one the day I moved it.

Q. Would you have gotten that dock in line in fifteen days before Mr. McIntosh did?

A. Yes; I would have done it thirty days before Mr. McIntosh did it.

Q. Did you make suggestions yourself to Mr. McIntosh?

A. Yes.

Q. What did he say in regard to them, or do in regard to them?

A. The only reply I would get from Mr. McIntosh was, "Oh, I can put that dock up in ten minutes when you are ready for it."

Q. Well, when you went to McIntosh and made these complaints to him, was Mr. Kelly ready to make his moulds?

A. Mr. Kelly, as soon as ever the old cement and stuff was got out, the old material got away from that ship, she was ready to be in line and should have been

in line by that time. That was long before July 16th. It was the dock master's duty to put her in line right away, just as soon as he could put her in line.

Q. And she never was gotten in line and kept in line until the 18th of August?

A. No, sir. She was gotten in line once or twice, and fell out again.

Q. When was it she was gotten in line?

A. She was gotten in line Saturday night, I think it was July 14th, and Monday morning again she was out as bad as ever.

Q. What made her fall out?

A. Water in the forward end of the pontoon.

Q. And then they were from the 16th of July until the 18th of August in getting her in line again?

A. They went at her in a proper manner after the 16th of July.

Q. Well, did they act in a proper manner after the 16th of July?

A. Yes; they seemed to think it was up to them to get busy after the 16th.

Q. Now, have you any criticism of what they did from the 16th of July up until the 18th of August in getting the dock in line?

A. No; they did the right thing after the 16th of July, after they found they could not hold the dock there with water they did the right thing.

Q. So it took them from the 16th of July until the 18th of August, at which first date they found they could not hold the dock in line with water,—it took them that length of time in which to get the dock

in line by the shifting and adjusting the ballast?

A. They got the dock into line, or practically into line, in a few days after the 16th; but it was the 18th of August before they had her in perfect line.

Q. Now after those first few days wasn't Kelly then able to go on with his moulds and his patterns?

A. As soon as she was near enough in line Kelly immediately got busy with moulds and patterns.

Q. Now how long was it from the 16th of July until the time that they got her in point of fact nearly in line?

A. I could not say. It was the 18th of August before they got her into true line; I know that.

Q. But you can give the court no information as to how long before that it was that they got her nearly in line so that Kelly could go ahead, and did go ahead?

A. Oh, it was several days before that that they got her near enough for him to make some of his moulds.

Q. Well, wasn't it several weeks before that?

A. No, it was not several weeks before that.

Q. But as I understand your testimony, you have no criticism to make as to the methods adopted by McIntosh to bring the ship in line after July 16th?

A. No. After July 16th they adopted the right methods of getting the vessel into line.

Q. Well, did they pursue their work with diligence?

A. They fairly well succeeded.

Q. And with diligence?

A. And with diligence.

(Witness excused.)

ALBERT KELLY was the next witness produced on behalf of Claimant, and, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, said witness testified as follows:

Direct Examination.

(By Mr. SMITH):

Q. State your name, age, residence and occupation, Mr. Kelly.

A. My name is Albert Kelly; occupation, I am following the steamship trade; and my age is forty-four years; and at the present time I live in Georgetown, convenient to Seattle.

Q. How long have you been in the ship building business?

A. About twenty-seven years.

Q. Did you have anything to do with the repairs or reconstruction of the steamship Elder?

A. Yes, sir; our company had a contract on it.

Q. What was the name of your company?

A. Portland Steel Ship Building Company.

Q. You had the contract from Mr. Peterson and Mr. Doe to do this work?

A. Yes, sir.

Q. Now, state what the condition of this ship was when you made this contract, Mr. Kelly.

A. Well, there was a large hole forward of her keel bunker, blockhead, frames, beams,—in fact, the whole inside work was bursted up; likewise all her shell plating, that was all bursted. And Mr. Baker,

the man in charge of raising her, he had the whole forward hold practically filled up with cement in order to raise her. We had nothing to do with the cement. Mr. Peterson and his men looked after that.

Q. Did you see her before the cement was taken out of her?

A. Yes.

Q. When did you commence your contract?

A. We commenced our contract on the 26th of June, but we had been working probably three or four days previous to that, with the understanding, the first contract was verbally arranged that we do it for a certain amount, and afterwards he was not satisfied with the specifications that another gentleman here got up, Mr. Hoben, I think, and he went up to Seattle and got Mr. Walker. Mr. Walker come down and got up his specifications, and that altered the whole thing. We took additional wood work to do, including the iron work. My first bid was simply for the iron work alone; the latter contract was to finish all of the woodwork outside of the cabin.

Q. Your contract was to finish all of the woodwork outside of the cabin?

A. Outside of the cabin work; yes, sir; cabin work and upper deck.

Q. And all the iron work?

A. All the iron work; that is in the hull proper.

Q. What did this include, Mr. Kelly?

A. Well, it included the hull of the vessel proper, and there was something to do at the rudder. And her main deck we had to plank over, and we had to

ceil all the inside of the hold, both forward and aft, inside of the vessel after we had her finished, after we had the repairs made to the iron work. Of course the after end of the vessel where we had to ceil we took off the old ceiling; the iron work wasn't damaged there; we took it up and put re-ceiling down, wooden ceiling.

Q. Now, how much keel was taken out, Mr. Kelly?

A. We ordered about forty-four feet from Seattle from Moran Company. There was somewhere about forty-three feet went in her; that is outside of the forefoot; there was probably seventeen or eighteen feet of the forefoot, that went in there. That is the same as the keel, only forward.

Q. Where did you get this keel from?

A. Got it from Moran Company at Seattle.

Q. Where did you get your plates from?

A. We got our plates from the east through J. R. Bowles and Company.

Q. Now, what was the condition of this ship at the time you commenced the work on her, and took your contract, as to whether she was in alignment along the keel or not?

A. No, she was not in line with the keel. She was lying down at the bow, the forward end of No. 1 pontoon.

Q. About how much was she out of alignment, do you know, Mr. Kelly?

A. Well, I judge probably all the way from within five to eighteen inches; I never measured her; but

just judge that.

Q. Did you have any trouble in getting this ship in alignment after you took the contract?

A. Yes, we had a lot of trouble. After we got ready for to make the moulds, I went to Mr. McIntosh and informed him, well, several days before we were ready so as to have time. Well, he told me that it wouldn't take many minutes for to do it, as soon as we were ready to let him know. Well, I kept repeatedly telling him, because I thought he would have considerable trouble, and when we actually got ready, was waiting for him, then I went after him pretty hot, and it didn't seem to take no effect for quite a while. At last I told him if there wasn't something done I would inform the Port of Portland, because we were up against it for dock dues after a certain date.

Q. When did you first speak to him about having the dock ready?

A. I spoke to him somewhere along about the 9th or the 10th of the month.

Q. The 9th or 10th of July?

A. Yes, about that.

Q. Was Mr. McIntosh about the dock all the time?

A. Well, I could not say he was there all the time, no. He was there considerable. Of course, I was back and forward in the city quite a bit myself, a time or two, getting material and such as that, and other things down there; but I was mostly at the dock, probably every day myself, not steady all the

time. I was probably down there in the morning for a couple of hours and maybe back in the evening.

Q. Who had charge of the business when you were away?

A. Well, we had a foreman there by the name of Mr. Stewart, and then Mr. Rogers there was around, one of my partners.

Q. Was he there all the time?

A. He was practically there all the time, yes.

Q. Now, was it possible if Mr. McIntosh had attended to his business to have gotten that dock in alignment in a short time?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial, and not within the issues made by the pleadings.

A. I would judge he could probably put that dock in line in a day or two days anyhow; I should think he should.

Q. When was the dock first gotten in line?

A. Well, on the 14th I think she was pretty fair; then Monday again she went out again, and then a few days afterwards we got her fixed up again, but she was dropping away more or less all the time; but we never got her properly into shape that we could do good until about the 18th of August. Any time that we would get a show we would make any moulds that we could so as to forward the work along. As soon as we got a little work in, got her bound together, it was easier to keep her in line.

Q. What was the trouble about not having her in

line? In what way did that interfere with your work?

A. Well, the first thing we wanted to do was to get in the keel. As soon as we got the keel in line we would try and make our moulds for the flooring plates and frames. We couldn't proceed with our work for to make any decent job at all, except she was in perfect line in order to get these moulds in true, you see, to the shape of the vessel.

Q. Witness is shown Exhibit 6 and asked to look at this cross-section showing the keel and state what he means, if he can point out there what he means by flooring plates.

A. This is a flooring plate here, the frame here (witness indicating).

Q. "D", isn't it?

A. "D" is flooring plate and "E" is the frame and "G" is the lining, and "I" is the keel plate, what we call the keel plate.

Q. What does "C" represent?

A. "C" represents keel rivets.

Q. Now, you say it was necessary for you to have this ship in line before you could make your pattern for these keel plates and your frame?

A. Yes.

Q. Where did you have these keel plates made?

A. We had them foundried. This bend is in them; we had them bent up at Moran Company, Moran Brothers. We got them all shipped down at the same time as we got the keel bow,—all come down in a car together. But we put all holes and done the scarphing,

and formed the shape of the plates here after they came, ourselves.

Q. Making the holes and scarplimg, all that was done here?

A. Yes, sir, we done that ourselves here.

Q. During the time you were delayed in this work by the fact the ship was not in line, what other work did you do?

A. Well, we were doing any work that we could possibly get along with. We done quite a lot of work over above the water mark, which we could have done after the vessel was off the dock.

Q. Did you put any plates in?

A. Yes, sir, we put in some above the water mark. We put in some bulwark plates,—put in some bulwark plates on the starboard side here (indicating on diagram). Those could have been left to stand almost until the last.

Q. Witness is shown Exhibit 5 and asked to state about how many of the plates could have been put in as shown by this opening after the vessel was in the water.

Mr. FLANDERS: I object to that as irrelevant and immaterial.

A. Well, all the plates outside of this one above the bilge could have been practically done out of water.

Q. I don't think this shows the bilge plates in here at all.

A. No; you have got to have an extension plan to show the bilge. It would come along here (indicating) about half way up.

Q. About half way up the opening?

A. Yes, about that.

Q. You say you might have put that in just as well outside?

A. Oh yes, as long as it was above the water mark, what the vessel would draw, you could do it as cheap outside as in the dock.

Q. And that you actually did put in?

A. I put it in in the dock, because it was the only work I could do while waiting on this other work; we had to have something for the men to go on with them.

Q. You say you put in some bulwark plates?

A. I put in two bulwark plates on the starboard side.

Q. Did you do any wood work, or anything of that kind inside?

A. Oh yes, we done all the ceiling in the after hold. I took the old ceiling up and put the new ceiling down, and done a lot of deck work and also on the main deck; I covered it too.

Q. How about that costing you more or less by putting it in there?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial.

A. Well, it would cost more for carpenters in the dock; we had to pay them a half a dollar a day more there than we had to outside. That was the standard wage.

Q. And your material, did that cost you anything more?

A. Oh yes, it cost us more in handling it. You can ship material into a boat lying along side a wharf

easier than you can into a dry dock.

Q. For what reason?

A. Well, because you have got to do a lot more handling in it; you know there is quite a difference in a vessel being alongside a wharf and when it is being pulled up to the dry dock and then having to pull it in; it would cost you probably twice the amount.

Q. You said you spoke to Mr. McIntosh about putting this dock in line?

A. Well, I spoke to Mr. McIntosh probably a dozen times or more, but he didn't seem to give me any satisfaction and I went to Mr. Johnson and asked Mr. Johnson,—I says, "Perhaps you can bear more influence with him than I can," and he went and had a talk with him and what Mr. Johnson told him I don't know. I know he spoke to him, but he couldn't get any satisfaction; he couldn't do anything except Mr. McIntosh told him to.

Q. Mr. Kelly, about how much were you delayed in the repair of this ship by the failure of Mr. McIntosh to keep this ship in line?

Mr. FLANDERS: I object to that as incompetent, irrelevant and immaterial, and not within the issues made in the pleadings.

A. Oh, I would say probably sixteen or seventeen days.

Q. Sixteen or seventeen days?

A. Yes.

Q. What would this delay consist of?

A. Well, the main delay was the thing that we had

to get in order for to get the vessel out of the water, was to get this keel in. We couldn't do nothing, practically speaking, until we got this in. That was the first start off before we could make moulds for the floors. Then afterwards we had to get the moulds made for the frames and floors, had to get them the shape of the vessel. That was the main thing. As soon as we had the keel in and had the frame and floor plates, the shell plating, as soon as we had the shell plating on and riveted—we could have done all this riveting even and the flooring after it was outside; all we had to do was to have them bolted together and placed on the inside. As long as we had the outside shell rivited and perfectly tight we could have floated the vessel and done all the other work outside.

Cross Examined.

(By Mr. FLANDERS):

Q. Mr. Kelly, your original contract was made with whom?

A. Mr. Peterson.

Q. That was a verbal contract?

A. Well, the verbal contract was first. I met him down the street here and he offered me a certain sum for to do the iron work, not no wood work at all, and I told him I thought with about five thousand dollars more on it I would take the job; so he says, "All right, I will go you."

Q. That was about when?

A. That was about probably June 20th or 21st, somewhere around about that.

Q. And on that you started to work?

A. Well, I started the next day. I seen him in the city and went down and started the next morning; I couldn't say exactly what date, but it would be four or five days before the 26th, before the original contract was made, the proper contract.

Q. Yes. Then it was after his talk with you and your actually starting in to work that he got Mr. Walker to prepare the specifications, was it?

A. Yes. Mr. Hoben, he had a sort of a specification drawn up, and he gave me this, but they were not binding, or anything; you could have construed them anyway; and he told me to go down, he didn't want to have the vessel lying there any longer, I guess, than possible in the dock, and he told me to go down and start to work and if there was any more work than what I had given him there on the Job that he would give me that amount, a certain amount of money for doing it, and if there was any more work and I didn't take it by contract he would allow me the days' work for what work I had already done,—if there was any change in the agreement.

Q. So Mr. Walker came over between the time you first began work, which was the 20th or 21st,—

A. Somewhere around there, yes.

Q. (Continuing)—and the 26th, which was the day when he had the specifications prepared?

A. Yes.

Q. And you signed the contract which covered more repairs than what Peterson had first talked to you about?

A. Yes, that is right.

Q. That is right, isn't it?

A. That is right.

Q. You ordered the keel from Moran Brothers?

A. Yes, sir.

Q. When did you order it?

A. Well, I think I ordered the keel,—oh, probably two or three days after we started in on the job. I ordered it a certain length, you know; I ordered it long enough; I couldn't get the exact length the condition the vessel was in, but in order to forward the work I ordered it longer than what we actually needed.

Q. When did you get that keel?

A. I think that keel came somewhere around about the 6th or 8th of August.

Q. You are sure of that?

A. Well, I am not positive now, but I know it was pretty well about that.

Q. Have you any record to show when that keel was actually received by you?

A. No, I can't say we have, but if we would hunt up the old records we could get the bill of lading, that is the invoice; I think we have some of them yet, I am not certain, but that would give it.

Q. The bill of lading wouldn't show the date they came?

A. Well, the invoice would show the date it was shipped on. They would let us know on that. I think I could get that even from the Moran Company, but we have them old bills yet, I guess.

Q. But you have no record to show the date of the

receipt of the keel?

A. Well, I don't know; it ought to show in our books; somewhere along about that time. The Railway Company could give it to us; I think that could be easily found out.

Mr. FLANDERS: Well, I ask that Mr. Kelly supply that data showing the time the keel was actually received by him.

Q. It was delivered at the dry dock, was it?

A. Yes, it came down with the keel plates from Moran's, was delivered down here at the dry dock.

Q. At the dry dock?

A. Well, yes, at the dry dock; right at the dry dock, yes.

Q. Now, the keel plates came along with the keel, did they?

A. Yes, sir.

Q. Now, until you got the keel you could do nothing, could you, in shape of getting it in finished shape for the work?

A. No, nothing. Well, we got some holes drilled; we got most of the holes drilled up there before it came down; that is clear. We could get the holes drilled where we were going to put new plates on, but where the old plates would work in we couldn't drill them until we got the thing in proper shape; so I left them for the time.

Q. Now, when that ship was gotten in line, how long would it take you to make the pattern for the keel?

A. Oh, probably the length of the pattern and the length of the keel, probably an hour.

Q. And as soon as you got your pattern, why then you could go to work on getting the keel in exactly the right length?

A. Oh yes.

Q. It came over to you, did it not, finished, excepting that its length was not correct?

A. Its length was not correct.

Q. Yes. All that you would have to do, all that you needed the pattern for, as far as the keel was concerned, was to get the exact length required for the new piece to go into the vessel?

A. You see, we would have to get the exact length for to do the scarphing on the boat, for to scarph the old keel on the boat for to suit the new keel we were putting in we would have to get the dead correct line. We ordered the keel a certain length scarphed, and as many holes as we could get put into it; we got the holes all drilling in where we were going to put in the new plates, but where the old keel plates were going to be retained, where they were already in, we had to let that go until it was in position. Then before we could make the scarph on the old keel plates we had to get the ship in proper line in order for to take the proper length for to make the scarphs on the old keel on the boat, so as to scarph them.

Q. Now, what are the scarphs?

A. Well, Mr. Walker has one designed here. That is a scarph (witness indicating on Exhibit 6).

Q. Well, the new keel is dove-tailed into the old; is that the idea?

A. Yes, lapped into the old.

Q. Did you need moulds for this scarphing?

A. Yes, we took a wooden templet or mould off of the new keel and then took a steel tape line, or a long batten and took the length of the new keel and marked it on the old keel, the position of it where it would go in, and marked our holes; likewise where we would get time to make this scarph, that is on the old keel, where the new keel would fit in against it, we had to do that, an in order to do that and take the exact length, and get time to make a good job of it, the boat had to come properly into line. The way she was why it would have thrown the keel longer; we had to cut it.

Q. Now, the new keel was the first piece of work you had to do, wasn't it?

A. Yes, the new keel was the first thing we practically had to put back into place to get along with all of our work.

Q. And you could not do much with your frames and plates until you got your keel in, could you?

A. No, we couldn't make no headway on them.

Q. Now, when did you, in point of fact, get your keel in?

A. Well, I could not say now, for definite, as I haven't got no proper record of when we actually did put that keel in. I judge it would be somewhere around about early in August, probably about the 1st or 2nd of August, or the first week in August.

Q. I thought you said the keel wasn't cut here at all?

A. After the keel first came here it was ready to go

in with the exception of getting the proper length of the keel and making scarphs for the old work, which took probably three or four days.

Q. Well, you were able to get your keel in, then, after it arrived early in August?

A. No, I couldn't get the keel in until I got the scarphs in the old keel.

Q. Well, when did you get the scarphs in the old keel done?

A. It was sometime in August. I had to wait until I got the ship in proper line before I could get the proper length for to do that. The ship the way she was leaning out of line, it was risky for me to take a batten and measure a new rivet of the keel and pull it on the boat the way she was in; I would not get it true enough.

Q. But in what manner, if at all, Mr. Kelly, were you delayed by the fact of the vessel not being in line up to the time that the keel had arrived in Portland?

A. Well, we were not, you see, very much inconvenienced,—delayed probably about four or five days.

Q. How do you arrive at this four or five days of lost time?

A. Well, supposing this keel had not arrived for a month afterwards, if the vessel had been put in proper line just as soon as I had got my old work out I could have substituted a piece of wood to act as wooden keel and went to work and made all my moulds for the whole frames throughout, and I could have had all my frames done, and my floor ready to go into

place as soon as this keel came from Seattle.

Q. But you knew when the keel was to come from Seattle, didn't you?

A. Well, I couldn't say for sure; I knew within probably a few days. They didn't give me an exact guarantee. But supposing the keel hadn't come and the vessel had to be put into line—I done a job something like this one time over in Victoria, B. C., about seventeen years ago, and we got the keel down in San Francisco; during the time of getting the keel in San Francisco I had substituted a wooden mould exactly the same size of the keel and I went to work and got all my moulds out for the framing and flooring and even put on the shell plate, and all I had to do when this keel came here was to drop it into place.

Q. But in point of fact in this particular repair job you did not intend to put in this wooden piece, did you?

A. Oh yes, sir. The ship had to be in line. If I had been waiting three days I would have put in the wooden mould, because the wooden mould would have cost me not to amount to nothing for putting it in. The keel was three by nine. I could have done it easily by going down to the lumber mill and ordering a piece of wood three by nine and putting it up there to take the place of the steel bar keel, until such time as I got it. You may, however, turn out and put in the floors, framing and shell bars, and rivet your shell plating up too, and when that keel would have come all you would have to do was shove it in place. You could put that keel in probably in three or four hours, right in place, drop your wooden mould

out. The other steel bar would take its place.

Q. But in point of fact, Mr. Kelly, up to the time of the arrival of the keel, you were just as much waiting for that keel to arrive as you were for the dock to be gotten in line, weren't you?

A. No. If the dock had been got in line I would have went to work immediately, and shoved in a wooden mould and went on with my moulds immediately. It was simply a matter of sending one of our men down to get a piece of timber three by nine and so many feet in length, and he could have got that probably down to the dock in an hour; the sawmill is practically beside us; and we could have shoved it up into position and then went to work and made our moulds.

Q. When did you in point of fact, Mr. Kelly, make the moulds for the keel?

A. As soon as we got the keel up in position we started in to make our moulds, but back and forwards, it was working out of position back and forwards, and we had to do the best we possibly could under the circumstances, and try to make the flooring, now and again a frame, in order to get the place a little patched up so we could hold the vessel in position.

Q. Now, can you state the date you first got your moulds completed?

A. Our moulds completed?

Q. Yes.

A. No, I could not; no, sir. I could only guess at that. But it was pretty well on in August, I know; but it was the latter end of August before we got our

moulds completed. My idea was—we sent for the steel from Chicago, and my idea was if we had got the vessel in good shape for to go to work and have all of our wooden patterns made, that is, for the frames, have them all made ready to drop on as soon as the steel came out from the East, in order to shove the work ahead. But the steel was here from the east long before we started to make any patterns at all.

Q. When did the steel get here from the East?

A. I think somewhere around the 19th of July. I thing it was about that, somewhere along about that date. The steel was here practically two weeks before we started to make any patterns at all, and I thought we would have all our patterns made, and we would be waiting on the steel arriving; that is what we figured on.

Q. So you began to make your patterns for the frames about the first of August; is that right?

A. No; it was two or three days on in August, probably three or four days, somewhere in the first week. That is the frames for the broken part.

Q. Yes; the rest of the work, of course you were going along with?

A. Yes; we went ahead with other work as much as we possibly could during the time we were waiting on this.

Q. Now, your first talk to Mr. McIntosh about getting the dock in line you say was on the 9th of July?

A. Yes, sir, about the 9th or 10th of July; I think that is right.

Q. Did you have any talk with him other than on this one occasion?

A. Oh yes. Afterwards I kept repeatedly after him; in fact, I was after him every day I saw him.

Q. What did he say to you?

A. In fact, he never gave me no proper decisive answer what he would do. I even went to Mr. Johnson and asked him, suggested things to him and asked him to go and see Mr. McIntosh, he would probably pay more attention to him than me. Mr. Johnson said he had no power to do anything except Mr. McIntosh told him. In fact, at last I told Mr. McIntosh on the dock—not on the dock but in front of the dock, that the matter would be reported to the Port of Portland if he didn't try to get the dock into line at once.

Q. Can you give the date when that conversation was had?

A. Well, I would judge that that would be probably about the 8th or 9th of August, whenever I got on to him. I would not say for sure, but probably somewhere along about that time.

Q. Now, you say you made a number of repairs on the Elder in the dry dock which could have been made with the vessel afloat?

A. Yes.

Q. Now, you didn't keep the vessel on the dry dock in order to make these repairs, did you?

A. No; I had a great many of them repairs made before I had the bottom work at all made. I had a lot of the repairs made above the water, work which I

could have done outside.

Q. That did not delay you on the dock at all?

A. Oh yes.

Q. How?

A. In the first place, if we could have got the vessel in line and got ahead with the bottom work, that was the work below the water mark, that was the work I would have crowded all my men onto in order to float the vessel and save dock dues, and all the other work could have been done after the vessel was afloat. But owing to the delay in getting the vessel into line I had to keep my men going at something, and consequently I just distributed them around on any work I had to do irrespective of whether it was above water mark or below it.

Q. But in point of fact that vessel was undocked as soon as the repairs to her bottom were completed, wasn't she?

A. Well, the following morning. The repairs was completed on, I think, Tuesday. I have a note here when she left the dock, I think (witness refers to memorandum book). They were finished Monday evening and she was floated on Tuesday morning.

Q. Now, these repairs that you did above the water line you did on the dock before you preferred to do that on the dock rather than wait until the vessel was floated and then do them, didn't you?

A. Well, it was the only thing I had to do; I had to keep my men going or else let them walk around and pay them, or else lay them off of the job, and it would have been a pretty hard proposition for me to

have got them around again whenever I wanted them.

Q. Now, you say your contract was that, after a certain number of days, the dock dues should be for your account?

A. Yes.

Q. And how many days were you allowed?

A. Allowed sixty days.

Q. Sixty days from what date?

A. From the 26th of June, Sundays not included and holidays.

Q. Was anything deducted from your contract price?

A. Yes.

Q. On account of dock dues?

A. Yes.

Q. How much?

A. About a balance of \$2,100 due us on our contract yet, somewhere about that.

Q. They penalized you that much, did they?

A. Yes.

Q. Because they claimed that it was your fault to the tune of \$2,100 that the dock dues had been incurred; is that it?

A. Well, I sort of thought that they held it to see how the case would turn out with the Port of Portland. That is as far as I could understand it.

Q. Did you ever receipt to them in full?

A. No; all that I ever got is the amount of money that we received on the contract; I have it in the book here; and the contract price is stated in the agreement.

Q. Now, can you give the exact amount?

Mr. SMITH: I object to that; it is irrelevant, incompetent and immaterial.

A. The exact amount I think is \$51,683.84.

Q. And the contract price is how much?

A. The contract price, I am not positive. Do you remember? Wasn't it \$46,750, and then we done the oil tank besides that; besides that, there was seven thousand dollars allowed for it outside the settlement I had with Mr. Doe regarding extra work. There was seven thousand dollars allowed in the written agreement, the written contract we made. You can add seven thousand and forty-six thousand seven hundred and fifty.

Q. Yes; that would make \$2,066.16 which was deducted?

A. Yes, that is right.

Q. You don't remember whether you signed a receipt in full, do you?

A. No, I did not sign no receipt in full; no, sir.

Q. You have contested the claim with the owners?

A. Well, yes. I took the matter up several times with Mr. Peterson but didn't get any satisfaction. and I spoke to Mr. Doe regarding the matter, and he referred me to Mr. Peterson, said Mr. Peterson would evidently settle it up with me.

Q. You have made no attempt to collect this \$2,066.16 from them, have you?

A. No, not that full amount; no.

Q. Do you know under what basis they arrived at this amount.

A. Well, I guess they figured up fifteen days' dock dues runs about \$115 to \$117 a day; still there was a balance there above the dock dues; there was a balance coming to us. In fact, I didn't sign—the only bills I signed for the money was the check that Mr. Peterson give me. He generally give me a check every week which I endorsed when I went for the money at the bank. He give us a check for a certain amount every week, and as I went down to the bank I endorsed it and got the money.

Q. You put the Beechly on the dry dock?

Mr. SMITH: Just before you ask that question, I move to strike out all the testimony concerning the contract, and the amount of it, and how much he was paid—all the testimony succeeding the last objection made by me—on the ground that it is irrelevant, incompetent and immaterial.

Q. You put the Beechly on the dry dock here, did you not, and repaired her under a contract?

A. Yes, sir.

Q. After your experience with the Elder?

A. Yes, sir.

Q. Mr. McIntosh was superintendent then?

A. Yes, sir.

Q. Your criticism of the dry dock and of Mr. McIntosh's management as superintendent was not so strong as to keep you from doing other work on that same dock with him there, was it?

A. No. But, Mr. Flanders, the Beechly and the El-

der was two different vessels. The stability of the Beechly was not gone at all; you could have docked the Beechly on almost any class of a dock as long as you had her lifted up. The pontoon dropping down a little wouldn't have done her but little harm, because the stability of that vessel wasn't gone whatever.

Q. It would have been a pretty hard thing with the Elder in the condition in which she was on the dock after the broken parts had been removed—it was a matter of difficulty, was it not, to get the vessel in line?

A. Well, I don't see why it should. I think that any man that thoroughly understood his business could manage that all right.

Q. Did you ever tackle a job like that on a floating dry dock before?

A. Not on a dock of that description, not on a sectional dock.

(Witness excused.)

WILLIAM ROGERS was next produced as a witness on behalf of Claimant, and, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMITH):

Q. State your name, residence and occupation.

A. William Rogers; Crystal Beach, near Seattle, and my business is following the ship business.

Q. You are over twenty-one years old?

A. Yes, sir.

Q. How long have you been in this business?

A. About seventeen years—fifteen years.

Q. Where?

A. Well, I have been at it on this coast here seven years, and about eight years in the old country.

Q. In what part of the old country?

A. Belfast, Ireland.

Q. Did you have anything to do with the repairs and rebuilding of the steamship Elder?

A. Yes; I was present all the time she was under construction.

Q. You were one of the owners or partners with Mr. Kelly?

A. One of the partners.

Q. In the Portland Steel Shipbuilding Company?

A. Yes.

Q. You were present at the beginning of the repairs of this ship?

A. Yes, sir.

Q. What was the condition of this ship when you undertook to repair and rebuild her?

A. She was almost broken in two amidship.

Q. About how much hole was in her?

A. I guess about fifty feet on the bottom, extending up almost to the main deck.

Q. What was the condition of the ship as to the keel, as to whether it was straight or not when you first undertook to work on her?

A. The keel was out of line forward on No. 1 pontoon.

Q. Was any effort made to put that pontoon in line?

A. Yes, there was several efforts made to put it in line, but it was the 18th of August, I think, before they finally got it in line to our satisfaction.

Q. Did you speak to Mr. McIntosh, or hear anybody else speak to Mr. McIntosh about it?

A. No, I didn't speak to Mr. McIntosh, but I heard Mr. Kelly speaking to both Mr. McIntosh and Mr. Johnson, and suggesting to Mr. Johnson to go to Mr. McIntosh, and suggestions that he made to Mr. Johnson for to put it to him, that he thought Mr. McIntosh getting suggestions from him he would take it from Mr. Johnson more than he would anyone else.

Q. How about Mr. McIntosh being about there; was he there all the time?

A. No; he was away quite a lot of time.

Q. About how long did they work upon this dock trying to get it in line?

A. Well, they had it in line about the 16th of July and it went out of line again the following Monday morning. It was Saturday they got it in pretty good shape, and when we came back Monday it was out again, and they worked off and on for about three weeks after that. It was about the 18th of August before they finally got it in line to our satisfaction.

Q. Now, what was the trouble that you could not work upon this vessel; what was the reason you could not work upon this vessel when the dock was out of line?

A. Well, we couldn't get our templets for the keel on account of being out of line; we couldn't get the correct line and get the scarphs and get the keel in, get them all taken approximately and order all the material for the frame, shells and keelsons, and everything; we couldn't do anything until we got the keel right in line.

Q. How much time do you think you lost by the fact that this dock was not in line?

A. Well, it was about four weeks lost during the time it wasn't in line but we were doing other work on the boat during that time.

Q. Well, do you think you actually lost any time in making your repairs by the fact the dock was out of line?

A. Yes; we lost probably fifteen or sixteen days; I would say about sixteen.

Cross-Examined.

(By Mr. FLANDERS):

Q. Do you know when the keel arrived in Portland?

A. Well, I don't know the correct time the steel arrived in Portland.

Q. The keel?

A. Steel, yes.

Q. No, the keel.

A. Oh, the keel. I think it arrived about in the early part of August down at the dock.

Q. You could not give the date?

A. I could not give the proper date.

Q. Now the plates and frames arrived how much,

if any, before the keel arrived?

A. Well, I would say they arrived about eight or ten days before them.

Q. What position did you hold in the Portland Steel Ship Company?

A. I was treasurer of the Portland Steel Ship Company.

Q. Did you have anything to do with the actual work upon the boat?

A. Yes, I was there all the time aboard the boat.

Q. You were?

A. Yes, assisting Mr. Kelly.

Q. What were you doing yourself?

A. Well, I was doing ship fitting too myself.

Q. Your duties as treasurer?

A. Yes.

Q. Handling the money of the concern did not take up all of your time, and you actually did assist in the repairs; is that right?

A. My duties as treasurer was generally on Saturday, and I was generally working the rest of the week.

Q. The rest of the time you were acting practically as an assistant foreman?

A. Yes, sir.

Q. Under Mr. Kelly?

A. Yes.

Q. Helping him out?

A. Yes.

(Witness excused.)

Mr. SMITH: I offer in evidence certificate of en-

rollment No. 7, dated the 3rd day of September, 1900; and also certificate of enrollment No. 22, dated November 21st, 1906.

Thereupon said two certificates were received in evidence on behalf of Claimant, without objection, and marked CLAIMANT'S EXHIBITS 7 and 8, respectively, and are filed herewith as part of this record.

Mr. SMITH: I also offer in evidence Bill of Sale from Macfarlane, Special Agent of the London Salvage Association, to J. H. Peterson, dated the 19th of June, 1905.

Said bill of sale was thereupon received in evidence without objection, and marked CLAIMANT'S EXHIBIT 9, and is returned herewith as a part of this record.

ANDREW HOBEN was next produced as a witness on behalf of Claimant, and, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. SMITH):

Q. What is your business, Mr. Hoben?

A. Surveyor, marine surveyor; it encompasses the whole business, marine surveyor.

Q. How long have you been in that business, Mr. Hoben?

A. I have been in the surveying business twenty years and two months more in Portland; you might say about twenty years now.

Q. Do you know the steamship George W. Elder?

A. Yes, sir.

Q. What business was she in sometime in 1905?

A. She was on a run between here and San Francisco.

Q. And what happened to her, if anything that you know of, along about January, 1905?

A. She went ashore at Goble on the rocks.

Q. Did you see her there?

A. Yes, sir.

Q. What was her condition then?

A. She was ashore with her bottom stove up; there was a big boulder through her bottom, a rock; it was just shoved right up.

Q. Well, was she capable of doing business at that time? Was she a going ship at that time?

A. Certainly not; too big a hole in her to be.

Q. How much of a hole was in her, do you know?

A. I think, as near as I can come, there was about a forty-foot or forty-five foot hole. There was other parts was broke, but the hole was drove right up through her bottom. There was, I think, twenty-four frames removed from her bottom. There was some planks that went further than that, but there was about forty or forty-five feet of her hole, as near as I can say now.

Mr. FLANDERS: That is, fore and aft?

A. That is fore and aft; and they came up past the turn of the bilge on each side, and the whole bottom was stove right up. She set on a lump, you know.

Q. How much was she damaged, do you suppose?

A. Well, she was damaged enough for to put her out of commission altogether.

Q. Do you know whether she was surrendered or not to the underwriters?

A. I think as far as I can recall, of course I have got no figures; she wasn't sold before me, but as far as I can recollect—well, I know the underwriters tried to get her afloat first and worked on her for two or three months. Captain McFarlane was here; and then, if I recollect rightly, I think she was sold by the underwriters to what they call Peteson; Jack Peterson, I think his name is. I am not swearing to that part of it; I am only just giving you what I think is about the way the ship was handled. I didn't see the sale, so don't know for sure, but I understood she was sold to him, because he took charge of her afterwards and spoke to me about her, about raising her and about surveying her, and one thing and another; so he must have had control of her.

Q. Well, was she a going ship then in a commercial line at all?

A. No; she was ashore on a rock where she went in the channel.

Q. Wrecked, was she?

A. Sure she was a wreck.

Q. Do you know what became of her afterwards?

A. Yes, they lifted her off. There was a man came out here from the East, from Chicago, some where back there, I don't recall exactly the place, and he lifted her off.

Q. What became of her then, do you know?

A. She was towed to St. Johns.

Q. And what was done with her there?

A. She was put on the dry dock.

Q. And repaired?

A. Yes.

Q. Rebuilt?

A. Well, she was repaired, you might practically say; she was partly rebuilt.

Q. What is your opinion as to her relative value as to her original value and the value after she was rebuilt?

A. After she was rebuilt in my opinion she was as good a boat as she was before she went ashore. Some parts of her were better; that is, the new parts; but other parts of her were no better. But as far as being in a seaworthy condition, she was just as good after she was rebuilt as she was before she went ashore; she might practically in my opinion be stronger.

Q. And how about the cost of rebuilding her, and so forth, as to original value?

A. I don't know exactly what she cost. I don't know anything of what they paid for either docking or reconstructing her or repairing her—didn't know anything about the figures. All I was doing was surveying, looking after the repairs to see that it was done to comply with the Veritas class.

Q. And after she went on the rocks until she was repaired what was her condition as to being a going ship?

A. Oh, she could not go to sea, she could not float.

Cross-Examined.

(By Mr. FLANDERS):

Q. When she went ashore, Captain, this rock pierced her bottom, did it not?

A. Yes, sir.

Q. She was just spitted on that rock?

A. Yes, sir; she just run up onto the rock and grounded, and then when she grounded there was a hole came in her and she filled, and as she filled she settled an the rock came through.

Q. So that the rock came through her bottom?

A. Right through her bottom, yes, sir. She was afloat at both ends, you know, when she went on. There were about forty odd foot at her bow; we sounded right around her with a diver; I did at the time make a plan of the bottom from the diver's report, and the sounding where she lay and gave it to Conway, but I suppose it is pretty hard to find that.

Q. She was raised by this man from the East, Captain Baker?

A. Yes, sir, Captain Baker raised her.

Q. And he cemented up her bottom as well as he could, didn't he?

A. Yes, sir; he turned to work and put canvas or bag first over the top of that rock.

Q. And by means of that when he floated her the pumps kept her afloat?

A. Yes, sir; he poured out tons and tons of cement just down her hatch like that, and it spread

over this broken place, and after two or three weeks it would come apart and then with powerful pumps he fetched from the East he simply just kept her afloat.

Q. Yes; and then he brought her to Portland with a barge on each side, did he?

A. Yes. Well, there was steamboats on each side; I am not sure about the barge, I couldn't say; but he fetched her to St. Johns.

Q. She was towed to the dry dock?

A. Yes, sir.

Q. With a steamboat on each side, but you don't know whether barges were used to assist in keeping her afloat or not?

A. They might have been, but I could not say. Of course, I did see, but I could not recollect to say for sure; but I know there was a steamboat on each side.

Q. You have seen her since?

A. Oh yes. I have made inspections of her every year since she has been in commission.

Q. She has the same hull that she had before, with the exception that the broken or injured members were renewed, has she not?

A. Just the same when she left the dry dock, the same engines and everything, excepting some little repairs made here or there.

Q. She left the dry dock with the same boiler and engine he had in her?

A. Yes, the same.

Q. The same machinery?

A. The same machinery.

Q. The same name?

A. The same name.

Q. The same model?

A. Beg pardon?

Q. Her model was not changed at all?

A. No, sir, just a new piece put in the center, especially in her bottom; they didn't take the plates off of her top side. Some places they were taken off and put back again.

Q. They didn't wreck her to raise her, did they?

A. Oh, no.

Q. The parts of the vessel were not taken apart?

A. No; they never touched the hull of the vessel at all; that is, to raise her; that is, they done nothing to the hull. As I say, they poured the cement and pumped her up and she came up herself.

Re-Direct Examination.

(By Mr. SMITH):

Q. About fifty feet of the hull of the keel was taken out, wasn't it?

A. Somewhere about forty-five; it may be a little more or a little less, if I recollect rightly, but I would not say for sure. I think the keel piece they put in was forty-eight feet, but I would not say for sure. There were about forty-five feet of new bottom put in her, and some places the plank were broke up.

Q. She was a steel ship?

A. Yes, she was steel or iron; iron is the same.

Q. You mean plates when you say plank?

A. Yes. In a sailing ship or wooden ship we call

them plank, and in a steamship we call them plates.

Q. She never could have again been a sea-going ship at all unless this had been put in, could she?

A. She could not be a river-going, let alone sea-going vessel. No, no, she wasn't fit to go anywhere. She was just about fit to fetch her up to St. Johns with these powerful pumps working all the time.

Q. In other words, she was a wreck, wasn't she?

A. Sure she was a wreck and a pretty bad wreck; she was pretty badly wrecked.

Q. Hardly worth anything, was she?

A. Well, the hull wasn't worth very much. Of course, the engines would be worth something, you know; they were not damaged.

Q. It would have been cheaper to have built a new ship than to take her off, wouldn't it?

A. Well, not if you put the cost right together, but if you would take the money that had been spent on that ship right through until the time she was repaired, and then take the difference in age, I think it would be cheaper for a man to have a new ship, because he would have had a much better ship and the ship would last longer. I think that is about correct, Mr. Flanders, wouldn't it be?

MR. SMITH: Oh, he doesn't know anything about it.

MR. FLANDERS: Mr. Doe has said that he put the value on this ship at over two hundred thousand dollars.

WITNESS: Well, I wouldn't care to give two hun-

dred for her. Her sister ship, Oregon, was sold for a great deal less.

Q. She is worth about a hundred thousand dollars, don't you think?

A. Well, of course, ship property was up a few years ago. It seems to be down a little. If that ship were in the market in England you would not get twenty thousand for her.

Q. You would not get twenty thousand for her?

A. No, sir. Here of course American ships are scarce and the value of a ship flying the American flag is worth a good deal more than a British ship even of the same class. Look at some of them fine ships sailing now in England, five or six thousand tons, that is sailing ships I am alluding to. I would not like to place a value on that ship, because I have no figures to go by.

Re-Cross Examined.

(By Mr. FLANDERS):

Q. If it had not been for the use of the dry dock they could not have put in this keel and these frames and plates, could they?

A. Oh no, certainly.

Q. When they repaired the vessel it was necessary to use, or to put her on, a dry dock, was it not?

A. Well, of course they would either have to do that or get her hauled ashore in some way, which would cost more than she was worth. You could make ways, you know.

Q. Was there any drydock on the Columbia River, or Willamette River, at the time she was repaired.

other than the Port of Portland dry dock?

A. There are none now.

Q. Were there then?

A. No, sir. I say there were none then; there are none now. The Willamette Iron Works is having a dry dock built, but it is not even ready yet.

Q. And at that time was this the only one?

A. No, the Port of Portland is the only dry dock.
(Witness excused.)

[Libellant's Exhibit A.]

Steamship Geo. W. Elder & Owners.

To The Port of Portland Dr.

Terms Net. Portland, Oregon, Sept. 21, 1906.

Net Register Tonnage	Gross Tonnage	First Day	Rate	Lay Day	Rate	Total
	1710	5-29	27c			461.70
				5-31	10c	171.00
				6-1	10c	171.00
				6-2	10c	171.00
				6-4	10c	171.00
				6-5	10c	171.00

(88 days from 6-5 to 9-18), 7c.....10533.60

Extra Account:—

460 Hours extra labor @ 30c138.00
 Damage to 22 Keel blocks @ 4.00 88.00
 250 Wedges @ 2½c 6.25

12082.55

Credit by certificate of deposit from Mil-
 ton W. Smith, Sept. 20, 1906 7294.55

Total Amount Due\$ 4788.00

Vessel docked May 28, 1906, 5:30 A. M.
Undocked Sept. 18, 1906, 9:30 A. M. Nine-
teen Sundays and Holidays allowed.

LIBELLANT'S EXHIBIT A,

A. W. Person,
Comr.

Filed May 2, 1911.

A. M. CANNON,
Clerk U. S. District Court.

[Libellant's Exhibit B.]

To the Honorable The Port of Portland:

The Steamship Geo. W. Elder and owners respectfully request your Honorable body to make a reduction in the charges heretofore rendered for the use of the Dry Dock by the said Steamship Geo. W. Elder, and present the following reasons for said reduction:

I.

A great deal of delay was caused by the difficulty of getting bidders to undertake repairs on this Dry Dock on account of its location and lack of shop facilities; finally after consuming more than twenty days' time the owners furnished financial backing, bonds, etc., to enable a local shop to make the repairs;

II.

In the earlier stages of the work there was a very considerable amount of time consumed in getting all the pontoons into line so that moulds could be made and the ship lined up for receiving new material;

III.

There was delay caused by inability to secure ma-

terial, no stock being carried in Portland, and then after various troubles, and some material had arrived, the oil tank at Portsmouth burned and destroyed the railway track leading to the Dry Dock, and for eleven days no material could be had;

IV.

Delay was caused by a period of exceedingly hot weather, and on such work as this, men could not be prevailed upon to work. This cause alone consumed at least four or five days;

V.

On account of the desire of the contractor to hurry the work along, he worked on several rainy days but accomplished nothing. Of course full dockage was charged for work so done and the results so far as progress was concerned amounted to nothing; there was probably a loss of four days in this regard;

VI.

The Elder was put so far into the dock that she did not use the two outside pontoons. This put the damaged part in a very bad place, being over the space between two of the pontoons; this location occasioned loss of time and expense, also made work slow and difficult;

VII.

The ship being in this position, two of the dock pontoons could be used and were so used, and so far as your petitioners know and are advised, no business was lost to the dock, the various vessels requiring docking being handled on the two pontoons mentioned;

VIII.

A very considerable time was lost by the contractor on account of strikes and labor troubles;

IX.

It is the usual custom of all docks, so far as your petitioners are advised and believe, to make a considerable reduction for a long contract and especially for wrecked vessels;

X.

The extra charges we also think should not be made against us under the circumstances.

In view of the foregoing, we respectfully ask a reduction in the amount of the bill rendered against the Geo. W. Elder and owners, and suggest that for the services performed a charge of not to exceed \$6,000.00 would not only afford you a good revenue but would in some degree compensate us for the various losses above mentioned, bearing in mind that at no time did we use more than three-fifths of the dock and that your Board had the use of the other two-fifths.

Dated at Portland, Oregon, this 15th day of October, 1906.

Respectfully submitted,

THE STEAMSHIP GEO. W. ELDER AND
OWNERS.

By Chas. P. Doe.

LIBELLANT'S EXHIBIT B,

A. W. Person,

Comr.

Filed May 2, 1911.

A. M. CANNON,
Clerk U. S. District Court.

[Claimant's Exhibit A, (1).]

KNOW ALL MEN BY THESE PRESENTS: That I, Archibald P. Macfarlane, Special Agent of The London Salvage Association, acting for the underwriters of the steamer George W. Elder, party of the first part, for and in consideration of the sum of ten thousand four hundred dollars (\$10,400.00) to me in hand paid by J. H. Peterson, party of the second part, (receipt whereof is hereby acknowledged,) do by these presents grant, bargain, sell and convey unto said party of the second part, his executors, administrators and assigns, all the following described personal property, to-wit:

The steamer GEORGE W. ELDER, as she now lies on the rocks in the Columbia River, at or near Goble, in the State of Oregon, together with all the machinery and equipment and other personal property belonging or appertaining unto said steamer and now in or about the same; and also all the machinery and equipment of said steamer now in my possession and within the City of Portland, Oregon.

TO HAVE AND TO HOLD the same unto said party of the second part, his executors, administrators and assigns forever.

And I do hereby covenant for myself and said Association, to and with said party of the second part, his executors, administrators and assigns, to warrant and defend the title to said property unto said party of the second part, his executors, administrators and assigns, against the claims of all persons lawfully claiming or to claim the same by, through or

under me or the said association or the said underwriters; and that I have due authority to make this sale and conveyance.

It is understood, however, that this conveyance does not cover or include any of the stores of said steamer, or any of the equipment thereof which has heretofore been sold, nor any cofferdams or other salvage gear or appliances whatsoever.

In Witness Whereof, I have hereunto set my hand and seal this 19th day of June, 1905.

[Seal.] ARCH. P. MACFARLANE.

¹ Executed in the presence of:

J. C. Flanders,

Henry Hewitt, Jr.

STATE OF OREGON,

County of Multnomah—ss.

This certifies that on this 19th day of June, 1905, before me the undersigned, a Notary Public in and for said State and County, personally appeared before me, the above named Archibald P. Macfarlane, Special Agent of the London Salvage Association, known to me to be the identical person described in and who executed the foregoing instrument, and acknowledge to me that he executed the same.

Witness my hand and Notarial Seal, at Portland, Oregon, the day and year in this certificate first above written.

[Notarial Seal.] J. C. FLANDERS,

Notary Public in and for the State of Oregon.

CUSTOM HOUSE, PORTLAND, OREGON.

Collector's Office, June 26, 1909.

I certify this to be a true copy from the original

Bill of Sale now on record in this office

H. M. MONTGOMERY,

Deputy Collector.

CLAIMANT'S EXHIBIT A (1),

A. W. Person,

Comr.

Filed May 2, 1911.

A. M. CANNON,

Clerk U. S. District Court.

[Claimant's Exhibit 2.]

Monday, May 21st, 1906.

Stm. McCracken on Dock to-day, working on Foot & Butterfly valves.

Tuesday, May 22nd, 1906.

Undocked Stm. McCracken at noon today. Rigging dock for Stm. Robarts this P. M.

Wednesday, May 23rd, 1906.

Docked Stmr. Robarts at 9 A. M. Rigging dock for Sch. "W. F. Ganns" and Stm. "G. W. Elder."

Thursday, May 24th, 1906.

Undocked Stmr. "Robarts" at 9 A. M. today. Sch. W. F. Ganns at dock ready to dock in the morning.

Friday, May 25th, 1906.

Docked Sch. "W. F. Ganns" at 10 A. M. today. Steamer Geo. W. Elder arrived at Dock at 11 P. M.

Saturday, May 26th, 1906.

Rigging Dock for Steamer G. W. Elder, put up extra Bilge Blocks to be filled in by Driver. Undocked Sch. "W. F. Ganns" at 1 P. M.

Sunday, May 27th, 1906.

Sank Pontoons at 7 A. M. this morning for "Elder". Elder hauled into dock at 10 A. M. Worked all day trying to get vessel upright, succeeded in doing so at 4 P. M. Put vessel on Reel Blocks at 6 P. M. and held her all night.

Monday, May 28th, 1906.

Docked Stmr. Geo. W. Elder at 5:30 A. M. this morning, finished blocking up vessel at 5 P. M. Put on extra watchman and engineer to keep steam at Power House as orders.

Tuesday, May 29, 1906.

Keeping Steam at Power House. Put watchman at each end of Pontoons to keep people off.

Wednesday, May 30, 1906.

Stmr. G. W. Elder on Dock today. No work being done on repairs on account Holiday Decoration Day. Dock employees on duty keeping up steam and tumming pontoons. Watchmen on duty.

Thursday, May 31, 1906.

Stmr. Geo. W. Elder on dock today. Men employed removing broken plates. Dock employees keeping steam on Power House Boilers and Tumming Pontoons.

Friday, June 1st, 1906.

Stmr. Geo. W. Elder on Dock. Men employed taking off broken plates and removing cement. Dock employees keeping steam and trimming pontoons. People from Moran Bros., Seattle, here today looking over work on Stmr. Elder.

Saturday, June 2, 1906.

Stmr. G. W. Elder on Dock. Steam at Power House and Pontoons kept in trim. Men employed by Elder taking off plates and removing cement and other material used in floating Stmr. G. W. Elder.

Sunday, June 3, 1906.

Stmr. G. W. Elder on Dock—men employed removing cement, concrete and other material used in wrecking vessel Steam kept up and pontoons trimmed.

Tuesday, June 5, 1906.

Stmr. G. W. Elder on Dock. Men employed same as yesterday. Steam kept up and pontoons trimmed.

Wednesday, June 6, 1906.

Stmr. G. W. Elder on dock. Everything going on same as yesterday.

Thursday, June 7, 1906.

Stmr. G. W. Elder on Dock. All work going on same as Wednesday, June 6th.

Friday, June 8, 1906.

Stmr. Geo. W. Elder on Dock. All work going along same as yesterday.

Saturday, June 9, 1906.

Stmr. Geo. W. Elder on Dock. Everything same as yesterday. Men removing cement, etc. Steam kept up and pontoons kept in trim.

Sunday, June 10, 1906.

Stmr. Geo. W. Elder on Dock. No work being done on her. Steam kept up at Power House and watchman on duty.

Monday, June 11, 1906.

Stmr. Geo. W. Elder on Dock. Men at work removing cargo, etc. Steam at Power House and pontoons attended to.

Tuesday, June 12, 1906.

Stmr. Geo. W. Elder on dock. Men at work removing cargo, old bulkheads, etc. Steam at Power House and pontoons attended to.

Stmr. J. McCracken brought down to Dock, one case of 200 electric lights, 100 lbs. white lead, Five gals. Linseed oil for Dry Dock.

Wednesday, June 13, 1906.

Stmr. G. W. Elder on dock. Men employed clearing out cargo and old gear. Steam at power house and pontoons attended to. Docked Stmr. Winona at 1:30 and undocked at 3 P. M.

Thursday, June 14, 1906.

Stmr. G. W. Elder on Dock. Steam at power house and pontoons attended to.

Friday, June 15, 1906.

Stmr. G. W. Elder on Dock. Men at work clearing out old wrecking gear and cargo. Steam at Power House and pontoons attended to.

Saturday, June 16, 1906.

Stmr. G. W. Elder on Dock. Men at work removing cargo. Steam at power house and pontoons attended to.

Sunday, June 17, 1906.

Stmr. G. W. Elder on Dock. No work being done on her today. Furnished power for P. R. Co. today. Watchmen on duty and pontoons attended to.

Monday, June 18, 1906.

Stmr. Geo. W. Elder on Dock. Men employed removing cargo, etc. Steam at power house and pontoons attended to.

Tuesday, June 18, 1906.

Stmr. Geo. W. Elder on Dock. Men employed removing cargo, etc. Steam at Power House and pontoons attended to.

Wednesday, June 20, 1906.

Stmr. Geo. W. Elder on dock. Steam at power house and pontoons attended to. Portland Steel Shipbuilding Co. started to make repairs on Stmr. Geo. W. Elder today at one P. M.

Thursday, June 21, 1906.

Stmr. Geo. W. Elder on Dock. Men employed at repairs and cleaning ship inside. Steam at power house and pontoons attended to. Capt. Birmingham and Edwards inspected Stmr. G. W. Elder this forenoon.

Friday, June 22, 1906.

Stmr. G. W. Elder on dock. Men at work on repairs and cleaning ship inside. Steam at Power House and pontoons attended to.

Saturday June 23, 1906.

Stmr. Geo. W. Elder on dock. Men at work making repairs and cleaning ship inside. Steam at power house and pontoons attended to.

Sunday, June 24, 1906.

Stmr. Geo. W. Elder on dock. No work done on her today. Steam at power house furnishing power

to P. R. Co. Watchmen on duty and pontoons attended to.

Monday, June 25, 1906.

Stmr. Geo. W. Elder on dock. Men at work on repairs and cleaning ship inside. Steam at power house. Dock employees trimming ballast on No. 1 pontoon. Furnishing power this afternoon to P. Ry. Co.

Tuesday, June 26, 1906.

Stmr. G. W. Elder on dock. Men at work on repairs and cleaning ship. **Steam at power house.** Pontoons attended to. Trimming ballast on No. 1. Furnished power to P. R. Co. this afternoon.

Wednesday, June 27, 1906.

Stmr. G. W. Elder on Dock. Work going on, everything same as yesterday. Furnished power to P. R. Co. this afternoon.

Thursday, June 28, 1906.

Stmr. Geo. W. Elder on Dock. Repair work and cleaning progressing favorably. Adjusting keel blocks and trimming ballast on No. 2 and 3 pontoons. Steam at power house and pontoons attended to. Furnished power to P. Ry. Co. this afternoon. Stmr. Gazelle delivered three oil tanks for use at Dry Dock.

Friday, June 29, 1906.

Stmr. G. W. Elder on dock. Men at work repairing and cleaning, steam at power house, trimming ballast on No. 2 and 3 pontoons. Furnished power to P. Ry. Co. this afternoon.

Saturday, June 30, 1906.

Stmr. G. W. Elder on dock, repair work going on, steam at power house. Furnished power to P. Ry. Co. this afternoon.

Sunday, July 1, 1906.

Stmr. G. W. Elder on dock. No work being done today. Furnished power to P. Ry. Co. this afternoon. Watchmen on duty.

Monday, July 2, 1906.

Stmr. G. W. Elder on dock. Steam at Power House. Furnished Power to P. Ry. Co. this afternoon.

Tuesday, July 3, 1906.

Stmr. G. W. Elder on Dock, undergoing repairs. Steam at power house. Pontoons attended to. Furnished power to P. Ry. Co.

Wednesday, July 4, 1906.

Stmr. G. W. Elder on dock. No work being done today. Furnished power to P. Ry. Co. today.

Thursday, July 5, 1906.

Stmr. G. W. Elder on Dock—men at work on repairs—steam at power house.

Friday, July 6, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at power house and pontoons attended to.

Saturday, July 7, 1906.

Stmr. Geo. W. Elder on dock—repairs going ahead. Steam at power house.

Sunday July 8, 1906.

Stmr. G. W. Elder on dock. No work being done today on repairs—watchmen on duty—trimming

pontoons today to straighten up Stmr. G. W. Elder.

Monday, July 9, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at power house. Trimming ballast on No. 1 pontoon to straighten up stmr. Elder.

Tuesday, July 10, 1906.

Stmr. Geo. W. Elder on dock. Repairs going ahead on hull. Steam at Power House. Received car of fuel oil for use of dry dock today.

Wednesday, July 11, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at Power House. Trimming ballast on No. 1 pontoon to straighten Stmr. Elder.

Thursday, July 12, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Steam at power house—connected steam pump to pontoon No. 1 to get water out of upper end to get keel of Elder in line.

Friday, July 13, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at power house. Still pumping out of No. 1 pontoon.

Saturday, July 14, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at power house. Pumping water out of No. 1 pontoon to Fair up Stmr. Elder.

Sunday, July 15, 1906.

Stmr. G. W. Elder on dock. No work being done on her repairs today. Steam at Power House. Fur-

nished power to P. Ry. Co. today. Watchmen on duty.

Monday, July 16, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at power house and pontoons attended to. Furnishing power to P. Ry. Co. this afternoon.

Tuesday, July 17, 1906.

Stmr. G. W. Elder on dock. Work on repairs going ahead. Steam at power house. Pumping water from No. 1 pontoon to turn Stmr. Elder. Furnishing power to P. Ry. Co. every afternoon.

Wednesday, July 18, 1906.

Stmr. G. W. Elder on dock—repairs going ahead. Steam at Power house. Still pumping No. 1 to keep vessel in trim. President Pease visited dry dock this afternoon to inquire into condition of pontoons in regard to pumping.

Thursday, July 19, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Steam at power house. Still pumping water out of pontoon No. 1 to keep in trim. Furnished power to P. Ry. Co. this afternoon.

Friday, July 20, 1906.

Stmr. Geo. W. Elder on dock—repairs going ahead. Steam at power house. Still pumping No. 1 pontoon to keep in trim. Ordered siphon pump from Crane & Co. to take place of steam pump.

Saturday, July 21, 1906.

Stmr. Geo. W. Elder on Dock—repairs going ahead. Steam at Power House—furnished power to P. Ry. Co. this afternoon. Dispensed with service of extra

Engineer, Geo. Epps tonight. Installed siphon in No. 1 Pontoon connected with hose and found it worked alright.

Sunday, July 22, 1906.

No work on Stmr. Geo. W. Elder today. Steam at Power House. Furnished power to P. Ry. Co. today. Watchmen on duty.

Monday, July 23, 1906.

Stmr. Geo. W. Elder on dock—repairs going ahead. Steam at power house. Furnished power to P. Ry. Co. this afternoon.

Tuesday, July 24, 1906.

Stmr. Geo. W. Elder on dock. Repairs going ahead. Steam at power house. Furnished power to P. Ry. Co. this afternoon.

Wednesday, July 25, 1906.

Stmr. Geo. W. Elder on dock. Repairs going ahead. Steam, etc., same as yesterday.

Thursday, July 26, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Furnished power to P. Ry. Co. this afternoon. Docked Barg "Bonanza" this afternoon at 3 P. M.

Friday, July 27, 1906.

Stmr. Geo. W. Elder on dock. Repairs going ahead. Steam at Power House. Furnished power to P. Ry. Co. Undocked Barge "Bonanza" at 5 P. M.

Saturday, July 28, 1906.

Stmr. Geo. W. Elder on Dock. Repairs going ahead. Everything same as yesterday.

Sunday, July 29, 1906.

No work on Stmr. G. W. Elder today. Steam at

power house furnished power to Portland Ry. Co. today. Watchmen on duty.

Monday, July 30, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at power house furnished power to P. Ry. Co. this afternoon.

Tuesday, July 31, 1906.

Stmr. G. W. Elder on dock. Repair work going ahead. Steam, etc., same as yesterday.

Wednesday, Aug. 1st, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam, etc., same as yesterday.

Thursday, Aug. 2, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at power house furnished power to P. Ry. Co. this afternoon.

Friday, Aug. 3, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam, etc., same as yesterday.

Saturday, Aug. 4, 1906.

Stmr. G. W. Elder on dock. Repairs. Steam, etc., same as yesterday.

Sunday, Aug. 5, 1906.

No work on Stmr. G. W. Elder today. Steam at power house furnished power to P. Ry. Co. today. Watchmen on duty.

Monday, Aug. 6, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Steam at Power House furnished power to P. Ry. Co. this afternoon.

Tuesday, Aug. 7, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Riggig dock for Pilot Schooner today. Steam at Power House. Furnished power to P. Ry. Co. this afternoon.

Wednesday, Aug. 8, 1906.

Stmr. Geo. W. Elder on Dock. Repairs going ahead. New piece of keel and stem arrived today and were put in place. Docked Pilot Sch. "Joseph Pulitzer" at 1 P. M. today. Steam at power house furnished power to P. Ry. Co. this afternoon.

Thursday, Aug. 9, 1906.

Stmr. G. W. Elder on dock—repairs going ahead. Undocked Pilot Sch. "Joseph Pulitzer" at 1 P. M. Furnished power to P. Ry. Co. this afternoon.

Friday, Aug. 10, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Pilot Sch. Joseph Pulitzer at wharf. Steam at power house furnished power to P. Ry. Co.

Saturday, Aug. 11, 1906.

Rigged dock and docked Fourmaster Schooner Admiral 605 tons at 3 P. M. today. Steam at Power House furnished power to P. Ry. Co. this afternoon. Stmr. G. W. Elder on Dock. Repairs going ahead. Employed extra engineer today.

Sunday, Aug. 12, 1906.

Stmr. G. W. Elder on Dock—no work being done today on her. Gang of Calkers at work on Sch. Admiral all day. Steam at power house furnished power to P. Ry. Co. today. Watchmen on duty. Received tank of fuel oil today containing 244 BBls.

Monday, August 13, 1906.

Stmr. G. W. Elder and Sch. "Admiral" on Dock to-day—both at work on repairs and painting. Steam at power house furnished power to P. Ry. Co. this P. M.

Tuesday, Aug. 14, 1906.

Stmr. Elder and Sch. Admiral on Dock. Both undergoing repairs. Steam at Power House furnished steam to P. Ry. Co. this P. M.

Wednesday, Aug. 15, 1906.

Stmr. G. W. Elder on dock undergoing repairs. Sch. "Admiral" on dock, calking, painting and putting new shoe on the whole length of Keel. Steam at power house furnished power to P. Ry. Co. this P. M.

Thursday, Aug. 16, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Undocked Sch. "Admiral" at 3 P. M. today. Steam at power house furnished power to P. Ry. Co. this P. M.

Friday, Aug. 17, 1906.

Stmr. G. W. Elder on Dock—repairs going ahead. Docked tug boat "Wallula" at 1 P. M. today. Steam at power house furnished power to P. Ry. Co. this P. M.

Saturday, Aug. 18, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Tug Boat Wallula on dock being cleaned and painted. Steam at power house furnished power to P. Ry. Co. this P. M. Received orders from President Pease to go to Astoria to survey Manzanita.

Sunday, Aug. 19, 1906.

Stmr. G. W. Elder and tug boat Wallula on dock. No work being done on either. Steam at power house furnished power to P. Ry. Co. today. Watchmen on duty. H. McIntyre, shipwright and self went down to Astoria last night and proceeded to Tongue Point Buoy Depot to survey Wm. Manzanita—finished up in the afternoon and arrived back in Portland to-night.

Monday, Aug. 20, 1906.

Stmr. G. W. Elder on Dock—repairs going ahead. Undocked tug boat "Wallula" at 10 A. M. today. Steam at Power House furnished power to P. Ry. Co. this P. M.

Tuesday, Aug. 21, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Filling foot valves on pontoons No. 4 and 5. Steam at power house furnished power to P. Ry. Co. this P. M.

Wednesday, Aug. 22, 1906.

Stmr. G. W. Elder on Dock—repairs going ahead. Steam at power house furnished power to P. Ry. Co. this P. M. Steam "Sch. Jim Butler" booked for dock tomorrow.

Thursday Aug. 23, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Rigged dock for steam Sch. Jim Butler this A. M. Steam at power house furnished power to P. Ry. Co. this P. M. Docked Stmr. Sch. "Jim Butler" at 3 P. M. today.

Friday, August 24, 1906.

Stmr. G. W. Elder on Dock—repairs going ahead. Steam Sch. Jim Butler on Dock, being painted and propeller put on shaft. Steam at power house furnished power to P. Ry. Co. this P. M. Undocked Steam Sch. Jim Butler at 3:30 P. M. today. Meter set back to zero today at 6:20 P. M.

Saturday, Aug. 25, 1906.

Stmr. G. W. Elder on Dock—work on repairs going ahead. Meter reading 004. Furnished power to P. Ry. Co. Absent from Dock today R. McI.

Sunday, Aug. 26, 1906.

Stmr. G. W. Elder on Dock—no work being done. Furnished power to P. Ry. Co. Meter reading 0026. Watchmen on duty. Absent from Dock, R. McI.

Monday, Aug. 27, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Furnished power to P. Ry. Co. Meter reading 0081.

Tuesday, Aug. 28, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Furnished power to P. Ry. Co. Meter reading 00105.

Wednesday, Aug. 29, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Furnished power to P. Ry. Co. Meter reading 00128.

Thursday, Aug. 30, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Furnished power to P. Ry. Co. Meter reading 00152.

Friday, August 31, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Furnished power to P. Ry. Co. Meter reading 00178.

Saturday, Sept. 1, 1906.

Stmr. G. W. Elder on Dock. Work going ahead. Furnished power to P. Ry. Co. Meter reading 00201.

Sunday, Sept. 2, 1906.

Stmr. G. W. Elder on Dock. No work being done today on her. Furnished power to P. Ry. Co. Meter reading 00228. Watchmen on duty.

Monday, Sept. 3, 1906.

No work on Stmr. G. W. Elder today—Legal Holiday. Furnished power to P. Ry. Co. Meter reading 291.

Tuesday, Sept. 4, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Rigged dock and docked Stmr. Manzanita today at noon. Furnished power to P. Ry. Co. from 5 A. M. to midnight. Meter reading 350.

Wednesday, Sept. 5, 1906.

Stmr. G. W. Elder and Manzanita on dock, both undergoing repairs. Furnished power to P. Ry. Co. from 5 A. M. to midnight. Meter reading 510.

Thursday, Sept. 6, 1906.

Stmr. "Geo. W. Elder" and "Manzanita" on Dock, both undergoing repairs. Furnished power to P. Ry. Co. Meter reading 648. Ordered one drum coal oil.

Friday, Sept. 7, 1906.

Stmr. Geo. W. Elder on dock. Repairs going ahead. Furnished power to P. Ry. Co. today. Meter reading 786. Undocked Stmr. Manzanita at 9:30 A. M.

Saturday, Sept. 8, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Docked Stmr. "Alliance" at 1:30 P. M. Furnished power to P. Ry. Co. this P. M. Meter reading 960.

Sunday, Sept. 9, 1906.

Stmr. G. W. Elder on dock—no work being done. Undocked Stmr. "Alliance" at 10:40 A. M. Furnished power to P. Ry. Co. today. Meter reading 984. Watchmen on duty.

Monday, Sept. 19, 1906.

Stmr. G. W. Elder on dock. Repairs going ahead. Furnished power to P. Ry. Co. this P. M. Meter reading 1036. Bkt. "Amaranth" booked for dock by telephone from Astoria. Started to move spud guides to separate pontoons 4 and 5 to accommodate Amaranth.

Tuesday, Sept. 11, 1906.

Stmr. Geo. W. Elder on dock. Repairs going ahead. Furnished power to P. Ry. Co. this P. M. Meter reading 1051. Rigging dock and moving pontoons for Bkt. "Amaranth."

Wednesday, Sept. 12, 1906.

Stmr. Geo. W. Elder on Dock. Repairs going ahead. Finished moving and securing pontoons for Bkt. "Amaranth" at 6 P. M. Furnished power to P. Ry. Co. this P. M. Meter reading 1072.

Thursday, Sept. 13, 1906.

Stmr. G. W. Elder on Dock. Repairs going ahead. Docked Bkt. "Amaranth" at 10:30 A. M. Furnished power to P. Ry. Co. this P. M. Meter reading 1089.

Friday, Sept. 14, 1906.

Stmr. Geo. W. Elder and Bkt. "Amaranth" on dock, both working on repairs and painting. Furnished power to P. Ry. Co. this P. M. Meter reading 1110.

Saturday, Sept. 15, 1906.

Stmr. Geo. W. Elder on dock—repairs going ahead. Undocked Bkt. "Amaranth" undocked at 9:30 A. M. today. Furnished power to P. Ry. Co. this P. M. Meter reading 8 A. M. 1126.

Sunday, Sept. 16, 1906.

Stmr. Geo. W. Elder on dock. No work being done today. Furnished power to P. Ry. Co. today. Meter reading 1142. Watchmen on duty.

Monday, Sept. 17, 1906.

Stmr. G. W. Elder finished repairs on outside at 6 P. M. today ready to float in the morning. Furnished power to P. Ry. Co. this P. M. Meter reading 1190.

Tuesday, Sept. 18, 1906.

Undocked Stmr. G. W. Elder at 9:30 A. M. Everything O. K. Started to work trimming pontoons with the ballast on dock, also fixing keel and bilge blocks damaged to H. Elder. Pump No. 6 out of order—now investigating the trouble. Stmr. G. W. Elder was on the dock 113 running days. 94 working

days. Furnished power to P. Ry. Co. this P. M. Meter reading 1209.

Wednesday, Sept. 19, 1906.

Nothing on dock. Men employed on ballast and blocks. Moved pontoons 4 and 5 back to place. Found the cause of pump No. 6 not working yesterday to be from outlet being choked with small drift wood. Furnished power to P. Ry. Co. this P. M. Meter reading 1226.

Thursday, Sept. 20, 1906.

Nothing on dock. Pontoons Nos. 4 and 5 in place and guide blocks bolted down. Men employed on ballast, blocks, etc. Furnished power to P. Ry. Co. this P. M. Meter reading 1238.

Memo. from Log Book of Port of Portland Dry Dock.

CLAIMANT'S EXHIBIT 2,

A. W. Person,
Comr.

Filed May 2, 1911.

A. M. CANNON,
Clerk U. S. District Court.

[Claimant's Exhibit 3.]

WORKMEN'S TIME FOR THE MONTH OF
MAY, 1906.
DRY DOCK.

[illegible]

CLAIMANT'S EXHIBIT 3,

A. W. Person,

Comr.

Memo. from Time Book of Supt. of Dock.

Filed May 2, 1911.

A. M. CANNON,

Clerk U. S. District Court.

[Claimant's Exhibit 4.]

SPECIFICATIONS

FOR THE REPAIRS TO HULL S. S. "G. W
ELDER."

THIS SPECIFICATION includes all wood and iron work that is to be removed, replaced by new, or faired and returned from keel to top angle of bulwark plating and from stem to stern; all cleaning, painting and cementing on interior of hull, from keel to main deck and fore and aft; in detail as follows:

PORT SIDE:

The following shell plates to be removed and replaced by new:

Strake A. Plates Nos. 1, 2, 7, 8, 9, counting from stem.

Strake B. Plates Nos. 1, 7, 8, 9, 10, counting from stem.

Strake C. Plates Nos. 4, 6, 9, counting from stem.

Strake D. Plates Nos. 6, 7, 8, counting from stem.

Strake E. Plates Nos. 6, 7, counting from stem.

Strake F. Plate No. 8, counting from stem.

The following shell plates to be removed, faired

and returned, if practicable; if not, to be replaced by new:

Strake C. Plates Nos. 4, 6, 9, counting from stem.

Strake D. Plate No. 9, counting from stem.

The 6th plate from stem in Strake F. to be reinforced on inside, where same is slightly cracked, by a plate strap running full width of plate and of same weight as Butt straps.

The Butts of plates Nos. 5, 6, 7, 8, in F. and G. Strakes to be entirely reriveted and outside butt straps fitted to same, if considered necessary by owners' representative.

All butts or landings in shell plating that show signs of leakage, to be gone over, recaulked where necessary, fitted with smooth-on where open and should any loose or started rivets be found, same are to be backed out and replaced by new.

STARBOARD SIDE.

The following shell plates to be removed and replaced by new:

Strake A. Plates Nos. 1, 7, 8, 9, counting from stem.

Strake B. Plates Nos. 1, 4, 5, 7, 8, counting from stem.

Strake C. Plates Nos. 5, 7, 8, 9, counting from stem.

Strake D. Plates Nos. 5, 6, 7, 8, 9, 10, counting from stem.

Strake E. Plates Nos. 7, 8, 9, counting from stem.

Strake F. Plates Nos. 7, 8, 9, counting from stem.

Strake G. Plate No. 8, counting from stem.

Strake H. Plate No. 7, counting from stem.

The following shell plates to be removed, faired and returned, if practicable; if not, to be replaced by new:

Strake A. Plate No. 4, counting from stem.

Strake B. Plates Nos. 3, 6, 9, counting from stem.

Strake C. Plates Nos. 4, 6, counting from stem.

Strake E. Plates Nos. 5, 6, counting from stem.

Strake F. Plates Nos. 2, 3, 4, 10, counting from stem.

Strake G. Plates Nos. 2, 3, 4, 5, 6, 7, 9, counting from stem.

Strake H. Plates Nos. 3, 4, 5, 6, 8, counting from stem.

Strake I. Plates Nos. 3, 4, 5, 6, counting from stem.

Sheer Strake Plates Nos. 2, 3, 4, 5, 6, counting from stem.

BILGE KEELS.

To be removed in way of damage on both sides and replaced by new in same manner as before, the port keel to have three new plates in bottom part and three in top; the starboard keel to have five new plates in bottom part and five in top, after said keels are in place and riveted and caulked, the interior is to be run full of pitch and holes made for this purpose to be neatly plugged by screw plugs.

GUARDS.

Starboard side; three lengths, counting from forward side port, aft, to be removed, faired and returned; butts of all other lengths to be gone over and refastened where necessary, also on port side.

MAIN KEEL.

The damaged part of keel to be cut out from break to next scarph forward of damaged and renewed with steel bar of same dimensions as old;

NOTE:—As the break in keel is within a few feet of an original scarph, it will be necessary to cut a new scarph in old part of keel aft of break.

FOREFOOT AND U IRON.

The damaged forefoot to be cut out from scarph to scarph and renewed with forged steel bar of same dimensions as old; the U iron shoe, which is in two parts, to be removed, the upper part to be faired and returned, the lower part to be renewed.

RUDDER.

To be lifted, printles to be trued and gudgeons rebused, rudder to be replaced and woodlock rerivited in place.

BULWARKS.

STARBOARD SIDES: The 1st bulwark plate aft of fore gangway to be removed and replaced by new, the stanchions in this vicinity to be faired back to place; the 4th plate to be removed and renewed by a plate about 18" longer than old plate, this to allow of fresh butts being cut on the next plates fore and aft, new butt straps to be fitted and liners at back of stanchions where necessary, the bulwarks and stanchions in this vicinity and in other places where out of line, to be faired up to their original position.

One cast-iron chock in after starboard quarter to be renewed and riveted in place.

PORT SIDE: The bulwark plate in front of boil-

er room door to be faired back to place and the door to ash shoot port to be overhauled, fitted with new hinges and fastener and put in a workable condition.

GANGWAY DOORS.

All of the iron gangway doors in bulwarks to be overhauled, faired up and fitted with new hinges, fastenings and bolts where necessary to be made workable, and put in first class condition throughout.

INTERIOR OF HULL.

No. 1 Lower Hold.

PORT SIDE: Twenty-two (22) floors, frames and reverse frames, counting forward from the 3rd floor forward of the cross bunker bulkhead, to be entirely cut out from the center line of vessel to points in vicinity of turn of bilge, said cuts to be located by the owners Representative and staggered in an approved manner, the floors and frames that can be faired in a satisfactory manner to be so treated and returned, the remainder to be renewed with new material of same scantlings as the original; the butts in main frames, where the new material connects with the old, to be secured by approved angle bosom straps, said straps to extend at least 2'6" on each side of butt, the spacing of rivets in these straps to be about 4" centers; the butts in reverse bars to be secured with approved angle straps where same can be used, otherwise approved flat plate straps are to be used; the butts of all floors are to be secured with double butt straps of approved dimensions, the riv-

eting of these butts to be staggered and rivets pitched as in usual practice.

STARBOARD SIDE: Thirty-five (35) floors, frames and reverse frames, counting forward from the cross bunker bulkhead, to be entirely cut out and treated as on Port Side with the exception that about fourteen (14) of these main and reverse frames are to be entirely renewed from keels on to main deck line, the remaining twenty-one (21) floors and frames to be cut as directed by owners' Representative.

KEELSONS AND STRINGERS.

The main keelson, which is of the intercostal type, to be entirely cut out where same is damaged for a distance of about forty (40) feet, or to the nearest butt, as may be approved, plates in this keelson that can be faired in a satisfactory manner to be so treated and returned. the remainder to be renewed in same manner as before.

The side keelsons, which are also of the intercostal type, to be treated in same manner as main keelson, for a distance of thirty-five (35) floor spaces from cross bunker bulkhead.

The bilge stringers and side stringers on both port and starboard sides to be cut out for a distance of about thirty-five (35) floor spaces and renewed.

The double angle strongbacks, which are located two on each side between the keelsons and stringers, to be cut out where same come in way of damage, the lengths that are good to be faired and returned, the remainder to be renewed.

TWEEN DECK STRINGER PLATE.

The tween deck stringer plate on starboard side to be cut out together with angles and side plate in way of damage for a distance of about forty (40) feet and entirely renewed, also in way of after tween deck side port, for a distance of about fifteen (15) feet.

BULKHEAD.

The forward cross bunker bulkhead, together with its margin angles and stiffeners to be cut out and entirely renewed in same manner as before, the steel used in building this new bulkhead to be about three lbs. heavier than the old metal originally was; new bulkhead to be absolutely watertight and to contain two watertight doors of same design as those now in place.

TWEEN DECK BEAMS.

Twelve under tween deck beams in way of damage to be cut out, faired back to their true camber and returned to position, should any of these beams break in process, or prove that it is not practical to fair same, or found to be too badly damaged, then said beams are to be renewed; and again should it be found practicable to fair any of said beams in place, same will be permitted; several of these beams that are broken in center, after being faired to position, are to be spliced with double fysh plates, said fysh plates to be of same weight as beams and to be about six feet in length staggered riveted in an approved manner.

HATCH COAMING.

No. 2 Tween Deck Hatch Coaming to be cut out

and the fore and aft parts entirely renewed, the remainder to be faired and returned.

TIE PLATES.

The fore and aft tie-plates on each side of tween deck beams, to be cut out in way of No. 2 Hatch, renewed for a length of about twenty (20) feet, the remainder faired and returned.

LOWER HOLD PILLARS.

Ten Lower Hold Pillars located between foremast and after bulkhead to be cut out, repaired or renewed if necessary, and returned to position.

ELEVATOR GUIDE STANCHIONS.

The Elevator Guides located in No. 2 tween deck hatch to be removed, faired, repaired and returned to position.

MAIN DECK BEAMS.

Seven under main deck beams in way of damage to be treated in same manner as prescribed for the damages tween deck beams, one main deck beam that is broken in the arm to have new end forged on if possible, if not same is to be renewed.

TWEEN DECK PILLARS

Three Tween Deck Pillars located in way of damage to be entirely renewed four others to be removed, repaired, faired and returned to position.

TWEEN DECK SIDE PORTS.

The fore and aft side cargo ports on both sides of tween deck to be overhauled, refitted, faired and put in a first class workable condition, new hinge pins, hinges, dogs, fastenings and strongbacks fitted if necessary; new rubber joints to be put in if necessary

to make these ports perfectly watertight and seaworthy.

PORT LIGHTS.

All port lights in and around tween decks, fore and aft, to be overhauled, fastenings and hinges renewed where necessary, new glasses put in where same are broken or cracked, and new rubber joints fitted where necessary to make said ports watertight.

SCUPPER PIPES.

The scupper pipes, main deck and tween deck, fore and aft, to be overhauled, renewed where cracked or broken, and rejoined where necessary.

ELEVATOR CAGES.

To be cleaned, faired up and returned to position, any broken iron work around same to be renewed.

HOLD LADDERS.

The Hold Ladders located at fore part of No. 1 and No. 3 tween deck hatches to be removed, faired up and fitted with new rungs.

STOKEHOLD BULKHEAD.

The forward stokehold bulkhead to be repaired by the lower part of plates being cut off about three feet above floor right across vessel and new plate fitted and riveted in place.

HATCH STRONGBACKS.

New wood strongbacks and hatch covers to be fitted to all main and tween deck hatches, the strongbacks to be well fitted and hatches to be of required thickness of pine or fir; edge bolted, neatly fitted and equipped with rings for lifting same.

TWEEN DECK PLANKING.

To be entirely removed from side to side, for the distance between the foremast and the after part of boiler casing, the sheathing of this deck to be entirely removed from stem to stern and the part of deck that has been removed and the hole of the sheathing fore and aft to be laid by new in same manner as before; the wood and cement stops in frame spaces between ship's sides and margin plate to be gone over, fore and aft, renewed where necessary and recemented.

HOLDS, PEAKS AND CROSS BUNKER.

To be thoroughly cleaned, scraped and washed out in readiness to paint,, all rust and corrosion to be chipped from frames, floors, inner plating deck beams, bulkheads &c.; all dirt and rubbish to be removed and all broken or started cement in limbers throughout ship's bottom to be chipped out and removed, the present bulkhead and wood work forming the cold storage room forward to be torn out and removed clear forward to collision bulkhead, the wood work and bulkheads forming the store rooms forward and aft in tween decks to be entirely removed, the sheathing of boiler and engine casings and water tanks to be entirely removed and tank and iron work scalded and cleaned in readiness to paint; the entire closed ceiling fore and aft including the ceiling in cross bunker to be removed, the cargo battens and sparring on ship's side and bulkheads in both lower and upper holds to be entirely removed.

NOTE.—All of the above wood work that is re-

moved is to be cleared away from vessel at time of removal.

NEW WOOD WORK.

The new wood work throughout holds and cross bunker to consist as follows:

Entire new closed ceiling fore and aft; this ceiling to be laid in same manner as before with material of same dimensions, ceiling to be fitted with the requisite limber hatches between keelsons; the quality of pine or fir used to be approved by owners' Representative, ceiling to be neatly fitted throughout and perfectly tight, so as to allow of no small cargo, such as coal or grain, to sift through into bilges, top of ceiling where same finishes above turn of bilge to be properly fitted with stops and cemented.

Entire sparring and cargo battens throughout lower holds and tween decks, and on bulkheads to be renewed with first quality spruce, dimensions of this sparring to be as before; sparring to be bolted and secured into position in same manner as that now in place.

Engine room and boiler casings and water tanks to be cased in with spruce planking in same manner as before, all neatly fitted and securely fastened.

The bulkheads and fittings of the fore and aft store room in tween decks, to be rebuilt and replaced with new material in same manner and design as those now in place, the bulkheads to be of spruce, of good quality and the fittings such as drawers, bins and lockers to be of No. 1 Pine.

The cold storage room forward is not to be rebuilt

under this contract.

WATER TANKS.

The fresh water tanks in holds to be thoroughly cleaned out, tested, made tight if leaking, and recrement washed in an approved manner.

CEMENT.

All cement in floor spaces of fore hold, cross bunker, and fore peak to be entirely chipped out to the bare iron and renewed to its original height with a mixture of equal parts of best Portland cement and good sharp sand.

The cement in after-hold to be tested throughout and where found loose, cracked or damaged to be renewed as above.

All floors and frames under closed ceiling, fore and aft, to be scaled to the bare metal and cement washed with two coats of pure cement wash.

PAINTING.

"The entire interior of the shell plating from stem to stern and from main deck right down including all frames, beams, pillars, bulkheads, engine and boiler casing and tanks (not including engine and boiler rooms) to be coated with one coat of good oil paint in colors as desired, all of the new iron work to receive at least two coats of good oil paint in colors as desired.

NOTE.—The water tanks before painting to be removed from their present position to be returned and securely fastened as before.

CONDITIONS.

It being the intention of these specifications to

cover all of the work necessary to put the hull of this vessel in a good and seaworthy condition, the contractor will therefore be called upon to observe not only the letter but the spirit of the contract, further this specification is intended to cover in detail all interior wood and iron work from main deck to keel, with the exception of any work contained in engine room, boiler room and shaft alley, and not including the renewal of **main deck**.

The contractor will be called upon to cut away the part of main deck necessary to effect the repairs to beams, plating, etc.; also to remove any piping, machinery or other matter that may be in the way, but not to return same.

NOTE.—In removing pipes or machinery great care is to be taken not to damage same.

Before any new plating, keel, or keelsons are put in place, the forward part of vessel is to be placed in true line with the after part, to the entire satisfaction of the owners' Representative.

During the process of cutting out and renewing the damaged parts of hull, great care is to be taken to securely shore up the remainder of vessel, as the contractor will be held responsible for any further damage that may be done to vessel whilst undergoing repairs.

All new plates, angle bars, and material that may be used in carrying out these repairs to be of best quality and to be of same scantlings as the original.

No shift of butts will be allowed unless previously agreed upon between contractor and owners' repre-

sentative. In fairing plates in place, the contractor will be called upon to line up all frames that come in way of plates so treated.

Should any extra work be discovered that is clearly outside of this specification same is to be done only by contract, as no extras of any nature whatever will be allowed unless previously agreed upon in writing by parties interested.

The contractor is to be prepared to furnish bonds for the faithful performance of the work, amount of bond to be agreed upon by owner and contractor. Time required for carrying out the work complete in detail to be agreed upon between owner and contractor at time of signing contract.

All dry dock charges to be borne by owner of vessel. All dirt and rubbish to be removed by the contractor, and all bilges in holds and cross bunkers to be left clean and clear of all shavings, etc.

All of the work done under this specification is to fully come up to the requirements of the BUREAU VERITAS. CLASSIFICATION SOCIETY.

All repairs and renewals to both wood and iron work, all cleaning and painting and all work of any nature whatsoever that is done under this contract, is to be carried out in a firstclass and workmanlike manner to the entire satisfaction of the owners' Representative, and officers of the U. S. Inspection Service.

The coal that is now on cross bunker will be removed by the owner.

The contractor to supply in full all material and labor necessary to carry out the above enumerated repairs, to supply all transportation, to men that may be necessary, to be responsible for all freight of materials and gear, and to meet all expenses of any nature whatsoever that may be incurred in carrying out his contract other than are clearly specified in the foregoing conditions.

Portland, Oregon, June 25, 1906.

Filed May 2, 1911.

A. M. CANNON,

Clerk U. S. District Court.

[Claimant's Exhibit 7.]

Permanent	Official Number.
Certificate No.	Numerals. Letters.
7	85,321 J. P. H. T.

THE UNITED STATES OF AMERICA.

Sec. 4319, Rev. Stats.

Cat. No. 538.

CERTIFICATE OF ENROLLMENT.

In conformity to Title L, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States.

W. W. Cotton, of Portland, Oregon, Secretary, having taken and subscribed the Oath required by law, and having Sworn that the Oregon Railroad & Navigation Co., of Portland, Oregon, a corporation duly under the laws of the State of Oregon, is the sole owner of the vessel called the "Geo. W. Elder," of Portland, Oregon, whereof Geo. Conway, a citizen of the United States, is master, and that the said vessel

was built in the year 1874, at Chester, Penn., of iron as appears by Permanent Register No. 3, issued at Portland, Oregon, May 17, 1900, now surrendered: made changed and said Permanent Register having certified that the said vessel is a screw steamship; that she has two decks, two masts, plain head, round stern; that her length is 250 feet, her breadth 38.5 feet, her depth 21 feet; that she measures as follows:

	Tons.	100ths.
Capacity under tonnage deck	1,418.52	
Capacity between decks above tonnage deck		
Capacity of inclosures on the upper deck viz:	291.07	
Gross Tonnage	1,709.00	
Deductions under Section 4153, Revised Statutes, as amended by Act of August 5, '82:		
Crew space,; Master's cabin,		
Steering gear,.....; Anchor gear,; Boat- swain's stores,		
Chart house,; Donkey engine and boiler,....;		
Storage of sails,; Propelling power,.....;		
Total Deductions	485.01	
Net Tonnage	1,224	

and said Vessel has been duly Enrolled at the Port of Portland, Oregon.

GIVEN under my hand and seal at the Port of Portland, Oregon, in the District of Willamette, this 3rd day of September, in the year one thousand nine hundred.

[Seal.]

L. A. PIKE,
Special Deputy Collector of Customs.

No Naval Officer.

CLAIMANT'S EXHIBIT 7,

A. W. Person,
Comr.

Surrendered at Portland, Oregon, Dec. 31, '05,
Wrecked.

CUSTOM HOUSE, PORTLAND, OREGON.

Collector's Office, June 26, 1909.

I certify this to be a true copy from the recorded
enrollment now on file in this office.

H. M. MONTGOMERY,
Deputy Collector.

Filed May 2, 1911.

A. M. CANNON,
Clerk U. S. District Court.

[Claimant's Exhibit 8.]

Permanent	Official Number
Certificate No.	Numerals. Letters.
22	85,321 J. P. H. T.

THE UNITED STATES OF AMERICA.

Sec. 4319, Rev. Stats. Cat. No. 538.

CERTIFICATE OF ENROLLMENT.

In conformity to Title L, "Regulation of Vessels in
Domestic Commerce," of the Revised Statutes of the
United States.

J. H. Peterson, of Portland, Oregon, Sole Owner,
having taken and subscribed the Oath required by
law, and having Sworn that he is a citizen of the Unit-
ed States, and the sole owner of the vessel called the
"Geo. W. Elder," of Portland, Oregon, whereof G.

M. Jessen, a citizen of the United States, is master, and that the said vessel was built in the year 1874, at Chester, Penn., of iron, as appears by Permanent Enrollment No. 7, issued at Portland, Oregon, Sept. 3rd, 1900, now surrendered: Vessel Wrecked, abandoned to Underwriters and Rebuilt, and Said Permanent Enrollment having certified that the said vessel is a screw steamship; that she has two decks, two masts, plain head, round stern; that her length is 250 feet, her breadth 38.5 feet, her depth 21 feet; that she measures as follows:

	Tons. 100ths.
Capacity under tonnage deck	1,418.52
Capacity between decks above tonnage deck	
Capacity of inclosures on the upper deck, viz:	291.07
Gross Tonnage	1,709.00
Deductions under Section 4153, Revised Statutes, as amended by Act of Aug. 5, '82:	
Crew space,; Master's cabin,;	
Steering gear,; Anchor gear,; Boat-swain's stores,;	
Chart house,; Donkey engine and boiler,	
.....;	
Storage of sails,; Propelling power,;	
Total Deductions	485.01
Net Tonnage	1,224

and said Vessel has been duly Enrolled at the Port of Portland, Oregon.

GIVEN under my hand and seal at the Port of Portland, Oregon, in the District of Willamette this

21st day of November, in the year one thousand nine hundred and six.

[Seal.]

I. L. PATTERSON,

Collector of Customs.

No. Naval Officer.

CLAIMANT'S EXHIBIT 8,

A. W. Person,

Comr.

Surrendered at Portland, Oregon, Jan. 26, 1907.
Ownership chgd.

CUSTOM HOUSE, PORTLAND, OREGON.

Collector's Office, June 26, 1909.

I certify this to be a true copy from the recorded enrollment now on file in this office.

H. M. MONTGOMERY,

Deputy Collector.

Filed May 2, 1911.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 14 day of June, 1912,
there was duly filed in said Court, a Notice of Appeal in words and figures as follows to wit:

[Notice of Appeal.]

*In the District Court of the State of Oregon for the
District of Oregon.*

PORT OF PORTLAND,

Libellant and Appellee,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc., J. H. PET-

ERSON and C. P. DOE,
Claimant and Appellants.

Sirs:

Take notice that the claimants above named hereby appeal to United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered herein May 15, 1912.

Dated Portland, Oregon, June 14, 1912.

Yours, etc.,

MILTON W. SMITH,

Proctor for Claimants and Appellants.

To C. E. S. Wood, Proctor for Libellant and Appellee.

Due service admitted at Portland, Oregon, 14 June, 1912.

C. E. S. WOOD,

By Erskine Wood,

Attorney for Libellant.

[Endorsed]: Notice of Appeal. Filed June 15, 1912.

A. M. CANNON,

Clerk.

And afterwards, to wit, on the 15 day of June, 1912, there was duly filed in said Court, a Bond on Appeal in words and figures as follows to wit:

[Bond on Appeal.]

Portland, Ore., No. 46304.

Hartman & Thompson, Gen. Agts.

*In the District Court of the United States for the
District of Oregon.*

PORT OF PORTLAND,

Libellant and Appellee,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc., J. H. PET-
ERSON and C. P. DOE,

Claimants and Appellants.

KNOW ALL MEN BY THESE PRESENTS,
That we, J. H. Peterson and C. P. Doe, as principals
and United States Fidelity and Guaranty Company,
a corporation organized under the laws of the State
of Maryland, surety, are held and firmly bound unto
the Port of Portland in the sum of Two Hundred
Fifty (250) Dollars and in the further sum of Seven
Thousand (7000) Dollars, to be paid to the said Port
of Portland, its successors or assigns, for the payment
of which and truly to be made we bind ourselves and
each of us, our, and each of our, heirs, successors,
executors, and administrators, jointly and severally
firmly by these presents. Sealed with our seals and
dated this 15th day of June, in the year of our Lord
one thousand nine hundred and twelve.

WHEREAS, J. H. Peterson and C. P. Doe, as
claimants of the steamship George W. Elder have ap-
pealed to the United States Circuit Court of Appeals
for the Ninth Circuit from a decree of the District
Court of the United States for the District of Oregon,
bearing date the 15th day of May, 1912, in a suit in
which the Port of Portland is libellant against the
steamship George W. Elder, her machinery, tackle,
apparel, etc., and ordering the said steamship George

W. Elder and her stipulators to pay libellants the sum of Four Thousand Seven Hundred Eighty-eight (4,788) Dollars and interest thereon at six (6) per cent. per annum from September 18, 1906, together with costs and disbursements herein, and,

WHEREAS, The said J. H. Peterson and C. P. Doe desire during the progress of such appeal to stay the execution of said decree of the District Court.

NOW, THEREFORE, The condition of this obligation is such that if the above named appellants J. H. Peterson and C. P. Doe shall prosecute said appeal with effect and pay all costs which may be awarded against them as such appellants if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause, or on the mandate of said Court by the Court below, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

[Seal.]

J. H. PETERSON,

[Seal.]

C. P. DOE,

United States Fidelity & Guaranty Company,

[Seal.]

By DOUGLAS R. TATE,

Its Attorney in Fact.

This bond approved as to form and amount and sufficiency of surety.

CHAS. E. WOLVERTON,

Judge of the United States District Court for the District of Oregon.

Dated Portland, Oregon, June 15, 1912.

[Endorsed]: Filed June 15, 1912.

A. M. CANNON,

Clerk.

And afterwards, to wit, on the 21 day of June, 1912, there was duly filed in said Court, Assignment of Error, in words and figures as follows to wit:

[Assignments of Error.]

*In the District Court of the United States for the
District of Oregon.*

PORT OF PORTLAND,

Libellant,

vs.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc., J. H. PETERSON and C. P. DOE,

Claimants.

The claimants hereby assign errors in the rulings and proceedings of the District Court herein as follows:

First: For that the Court erred in overruling claimants' exceptions to the libel herein.

Second: For that the Court erred in entering a final decree herein and therein making the following findings:

1. That on the 29th day of May, 1906, libellant was and still is a corporation created by and existing under certain acts of the legislative assembly of the State of Oregon, with power, inter alia, to operate a dry-dock.

2. That prior to the 29th day of May, 1906, the steamship George W. Elder, a vessel of the gross ton-

nage of 1710 tons, plying the waters of the United States, sank in the Columbia River.

3. That on the 27th day of May, 1906, at the request of J. H. Peterson, her owner, and relying upon the faith and credit of said vessel, the libellant lifted said vessel upon its floating dry-dock at Portland, Oregon, and furnished dry-dockage for said vessel from the 29th day of May, 1906, to the 18th day of September, 1906.

4. That under and by virtue of Sec. 5706 of the statutes of Oregon, as compiled by Charles B. Bellinger and W. W. Cotton, a lien arose against said vessel in favor of the libellant for dry-dockage services rendered upon the faith and credit of the vessel.

5. That said George W. Elder, though wrecked, abandoned to the underwriters and her register closed, was, at the time when such services were rendered, a vessel in the maritime sense, and subject to reasonable dry-dock charges and to a maritime lien on account of such charges.

6. That no delay in the repair of the vessel was caused by the negligence or unskilfulness of the libellant.

7. That the reasonable and agreed value of the services rendered by the libellant to the George W. Elder were:

Dry-Dockage.

May 29th, 1 day 27 cents per ton gross	\$ 461.70
5 days, 10 cents per ton per day	855.00
88 days, 7 cents per ton per day	10,533.00

Labor.

460 hours at 30 cents per hour	138.00
Keel blocks and wedges injured, or destroyed	94.25
<hr/>	
Total amount earned	12,082.55
Paid on account	7,294.55
<hr/>	
Amount due	\$ 4,788.00

And entering a decree against the said steamship in the sum of \$4,788.00 with interest at 6 per cent per annum from September 18, 1906, together with costs and disbursements herein incurred.

Third: For that the Court erred in not entering a decree in favor of the claimants, dismissing the libel herein, and releasing the steamship from any liability thereunder or to the said Port of Portland.

Dated Portland, Oregon, June 20, 1912.

MILTON W. SMITH,

Proctor for Claimants.

[Endorsed]: Assignment of Errors. Filed June 21, 1912.

A. M. CANNON,

Clerk.

And afterwards, to wit, on the 19 day of June, 1912, the same being the Judicial day of the Regular March, 1912, Term of said Court; Present: the Honorable CHAS E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Enlarging Time to File Transcript.]

*In the District Court of the United States for the
District of Oregon.*

PORT OF PORTLAND, No. 4879.

Libellant and Appellee,

vs.

June 19, 1912.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc., J. H. PET-
ERSON and C. P. DOE,

Claimants and Appellants.

Now, at this day, for good cause shown, it is ORD-
ERED that Claimants' time for printing the record
and filing and docketing this cause on Appeal to the
United States Circuit Court of Appeals, Ninth Cir-
cuit be, and the same is hereby, enlarged and extend-
ed ninety (90) days from this date.

CHAS. E. WOLVERTON,

Judge.

[Order Certifying Up Original Exhibits.]

*In the District Court of the United States for the
District of Oregon.*

PORT OF PORTLAND, No. 4879.

Libellant and Appellee,

vs.

July 8, 1912.

THE STEAMSHIP GEORGE W. ELDER, her
machinery, tackle, apparel, etc., J. H. PET-
ERSON and C. P. DOE,

Claimants and Appellants.

It appearing to the Court that Claimants' exhibits

5 and 6 introduced in evidence upon the trial of this cause are of such character as to require inspection by the Appellate Court upon the appeal of this cause.

It is Ordered that Claimants' said exhibits 5 and 6 be certified up by the Clerk of this Court with the transcript on the appeal of this cause to the United States Circuit Court of Appeals, Ninth Circuit.

CHAS. E. WOLVERTON,

Judge.

IN
**The United States Circuit
Court of Appeals
Ninth Circuit**

STEAMSHIP GEO. W. ELDER, HER MACHINERY,
TACKLE, APPAREL, ETC., J. H. PETERSON
AND C. P. DOE
CLAIMANTS AND APPELLANTS

vs.

THE PORT OF PORTLAND
LIBELLANT AND APPELLEE

Brief for Claimants and Appellants

STATEMENT OF CASE.

This is a libel brought by the Port of Portland, a municipal corporation, incorporated under a special act of the legislature of the State of Oregon, against the Steamship Geo. W. Elder, her machinery, tackle, apparel &c. under what is claimed to be a maritime contract for drydockage of the said steamship and for extra labor upon said ship and for damages to keel blocks, wedges &c. when the vessel was being docked.

The history of the case is about as follows: The Steamship Geo. W. Elder is a vessel of 1710 tons, having her home port in the City of Portland and plying between various ports of the State of Oregon and

the State of California. On the 21st day of January, 1905, this steamship was wrecked on a rock in the Columbia River near Goble, in Columbia County, Oregon. Several ineffectual attempts were made to raise the ship and afterwards she was abandoned by the owners to the insurance companies, and on the 31st day of December, 1905, her enrollment was surrendered. Again ineffectual attempts were made to raise her, and on the the day of, 1905, she was sold by the insurance companies "for whom it may concern" to one of the claimants in this case. After a long series of mishaps and ineffectual attempts to raise the vessel, she was finally raised on the 21st day of May, 1906—a year and five months after she had gone on the rocks. She was then taken to the dry dock belonging to the libellants in this case and docked on the 29th day of May of the same year. She remained on the dock from the 29th day of May, 1906, to the 18th day of September of the same year, a period of little more than three and a half months. For this service we are asked by the libellants to pay \$10,533.60 and for some extra work and keel blocks, &c.

SPECIFICATION OF ERRORS RELIED UPON.

1. The Court has no jurisdiction: (a) because the vessel or hulk placed on the dock was not a going ship—was dead, and therefore not within the cognizance of the Maritime Court: (b) that even if she were a live ship, still the Section 5706 of B. & C.'s Code under

which the lien is claimed, does not give a lien for such services as were rendered in this case.

2. The ship was damaged by the carelessness in docking and in the manner in which she was placed on the dock.

3. The incompetence and carelessness of the dock company kept the vessel many weeks longer on the dock than otherwise would be required.

4. The extra labor claimed and the damage to keel blocks and wedges are simply matters and things incident to docking of any vessel.

ARGUMENT.

Now, to take these matters up seriatim:

1a.

The evidence shows that the ship's enrollment was cancelled after the wreck, cancellation being dated December 31, 1905, and not until November 21, 1906, some time after the filing of this libel, was the ship re-enrolled, new papers being stamped "Wrecked, abandoned to underwriters and rebuilt." It is clear therefore that at the time the repairs or rebuilding in controversy were made, the alleged ship was not engaged in commerce or navigation—it was dead. It was therefore not subject to admiralty jurisdiction, no more than the ship would have been for the original building. In fact this ship must stand in the same position as if this was services rendered in its original building. It had been at the bottom of the river for nearly a year and a half.

In the *Hendrick Hudson*, 3 Benedict 419, the Court says:

"The fact that the structure has the shape of a vessel, or had been once used as a vessel, or can by proper appliances be again used as such, cannot affect the question. The test is the actual status of the structure as being fairly engaged in commerce or navigation."

In *The Warfield*, 120 Fed. 847, the Court says:

"In her position, on the dry dock, she was not only out of commission and withdrawn from navigation, but also incapable of navigation."

In the *William Windom*, 73 Fed. 496, 498, the Court says:

"The test given for determining whether a given contract is or is not maritime in its nature is the question whether it pertains to rights and duties belonging to the commerce and navigation that are under the control of the national government, including contracts for furnishing repairs and supplies for vessels engaged in such commerce and navigation. The doctrine of the supreme court is that, while a boat or vessel is being originally built it is not connected with commerce and navigation in such sense that contracts made for the building the boat, in whole or in part, or for furnishing the labor or materials, can be said to be connected with or have reference to commerce or navigation."

In *The Sirius*, 65 Fed. 226, 228, the Court says:

"We begin with the elementary proposition that the test of admiralty jurisdiction over causes of action

arising from contracts is not the locality of the performance of the contract, but its subject-matter. It is a cardinal principle of admiralty jurisprudence that, to give a court of admiralty jurisdiction over contracts, the subject-matter thereof must be maritime. It is not enough that the service which sprang from the contractual relation be performed on water, or even that it be done on board, and for the benefit, of a vessel which is afloat. These are not the exclusive tests. The service arising from the contract must be of a maritime character, and I might add not nominally, but substantially so. The expression "maritime character" or "nature" is held to mean any act which contributes to the navigation of the vessel, presently or prospectively."

See also:

McMaster vs. 1 Dredge, 95 Fed. 832.

The Paradox, 61 Fed. 860.

The Richard Winslow, 67 Fed. 259; 91 Fed. 426.

The Pulaski, 33 Fed. 383.

The Murphy Tugs, 28 Fed. 429.

The C. Vanderbilt, 86 Fed. 785.

King vs. Greenway, 71 New York 413.

James F. Furber, 129 Fed. 808; 157 Fed. 124.

Levering vs. Bank, 1 Cranch. C. C. 207 (Fed. Case No. 8287).

The Thos. Scattergood Gilp, 3 (Fed. Case No. 11106).

Russell vs. Barkman, Fed. Case No. 12151.

The following cases will probably be cited as holding otherwise than above stated:

Mississippi, 6 Fed. 443.

The Vida Sala, 12 Fed. 207.

Ruggles, Fed. Case No. 6062.

In the case of the *Mississippi*, it appears that the steamship "stood in need of certain supplies, disbursements and services to render her seaworthy and to enable her to *proceed on her intended voyage*." It is apparent therefore that this ship was therefore engaged in commerce. She had a particular voyage in view, and the services were to enable her to proceed on such *intended voyage*. Therefore that case is not at all in point, because the Steamer *Elder* was not engaged in commerce; she had no particular voyage in contemplation, and the services were not intended to enable her to *proceed* on any voyage. On the contrary, the commercial pursuits of the *Elder* had been broken off and discontinued for more than a year and a half. She was withdrawn from commerce and the services rendered were the same as services rendered for the building of a new ship. They were to equip her for again engaging in commerce—"not to proceed on her intended voyage." Such services have never been held to be within Admiralty jurisdiction.

In the case of the *Vida Sala* (12 Fed. 207), it appears that the ship while actually engaged in commerce had broken a shaft; that docking was necessary to enable mechanics to get at the shafts in making repairs. The ship's crew was not discharged, but aided in docking the ship, and Judge Erskine on page 212 of his opinion says: "The work done must be regarded as a betterment * * * absolutely essential to render

her seaworthy and enable her to *prosecute* her voyage." It is therefore apparent that the *Vida Sala* was actively engaged in commerce, and the repairs required only a temporary halt; the ship's crew not being discharged. The case is therefore widely different from the other.

The case of the *Ruggles* (Fed. Case No. 6062) is squarely in conflict with the decision of the late Judge Bellinger in *McMaster vs. 1 Dredge* (95 Fed. 832), and we believe that the *Ruggles* case announces a proposition which is neither supported in principle or by authority.

1b.

This vessel—if vessel at all, is a domestic vessel, under any view of the case, and the lien is claimed under Section 5706 of B. & C.'s Subd. 2 & 3. The whole section is as follows: "Sec. 5706. Every boat or vessel used in navigating the waters of this state or constructed in this state shall be liable and subject to a lien.

1. For wages due to persons employed, for work done or services rendered on board of such boat or vessel.

2. For all debts due to persons by virtue of a contract, expressed or implied with the owners of a boat or vessel, or with the agents, contractors, or subcontractors of such owner, or any of them, or with any person having them employed to construct, repair or launch such boat or vessel, on account of labor done or materials furnished by mechanics, tradesmen, or others in the building, repairing fitting and furnishing, or equipping such boat or vessel, or on account of stores

and supplies furnished for the use thereof, or on account of launch ways constructed for the launching of such boat or vessel.

3. For all sums due for wharfage, anchorage, or towage of such boat or vessel within this state.

4. For all demands or damages accruing from the nonperformance or malperformance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel on which such contract is to be performed, and for damages or injuries done to persons or property by such boat or vessel." Now the Port of Portland is not an individual, nor an ordinary corporation—it is a municipal corporation, and unless it is authorized to make charges or contracts for certain things, it has no authority to make these charges. Section 4639 B. & C.'s Code, Sub. 4 is the only provision which authorizes charging for any services rendered. Now this only authorizes the charging for the use of the dock by mechanics. There is no provision authorizing a charge against a ship, and if such charge is authorized, it is only by the general power of the Port of Portland to make contracts. In regard to this power, we may assume that if the Port of Portland were an ordinary business corporation, this would be sufficient to warrant a contract whereby the Port of Portland would receive compensation for services rendered, but the Port of Portland is not an ordinary business corporation. It is a public or municipal corporation. If this provision were sufficient to authorize a charge

for performing such services, then if my house were on fire and I summoned the Portland Fire Department, which, after considerable work, succeeded in saving the house, the city could render a bill for services rendered, and if I refused to pay, could place a lien upon my property under Section 5640 of B. & C.'s Code for performing work and labor upon my house. We think the Court will not listen for a moment to such a claim, but if the claim which the Port of Portland has made against this ship be authorized, then the City of Portland could have the same right to present a claim and file a lien for services rendered for extinguishing a fire in my house.

But the fact is that this statute is framed on the theory that the use of this dock is to furnish to mechanics having contracts or jobs to repair ships, a place on which to do their work, and the Port of Portland is authorized to charge such persons, but not the owners of the ships also.

We note also in this connection that the statute authorizes the Port of Portland only *to make contracts*, but the libel in this case does not allege that *a contract was made*. On the contrary it simply asserts that the services were rendered, and such services were the schedule price and value of \$10,533.60, with some extra services making a total of \$10,765.85, and that no portion thereof has been paid except \$7,294.55. Hence no contract for charges was ever made, and the case does not fall within the above provision which apparently contemplates an express, not implied contract. We understand that an agreement to pay for services ren-

dered by a public corporation is not implied, except when a charge is specially authorized and a schedule of toll or fees is proposed. But the Act only authorizes a schedule of charges or fees to be made against mechanics; the theory of the Act being that the dock is furnished to mechanics and not to the ship-owners. Now according to our reading of this Section, there was no provision for a lien for repairs or for dockage. It is a general rule that all lien laws in Oregon must be construed strictly, and it would seem that a state lien law should be construed strictly in an admiralty court the same as it would in a state court, and this has been so held in numerous Federal decisions.

Dalles vs. Wasco, 3 Or. 527, 532.

Kendall vs. McFarland, 4 Or. 292, 295.

Pilz vs. Killingsworth, 20 Or. 432, 435.

II.

The testimony in this case clearly shows that the vessel was damaged by carelessness in docking and in the manner in which she was placed on the dock. The placing of the damaged part of the vessel directly over the opening between two sections of the dock so that every move of the dock would change the position of the two ends of the ship, was clearly carelessness on the part of the dock-master, and this added greatly to the length of time which it took to repair the ship, and therefore the claimants aver that the sum paid is full value for all services. (See testimony of Doe, Walker and Kelly.)

III.

The testimony shows that the incompetency and carelessness of the dock company in handling the dock after the ship was once located, kept her at least fifteen days longer on dock than otherwise would have been required. The libellant is not entitled to recover dockage charges during this time that the ship was held on the dock owing to the negligence or mismanagement of libellant. (See Testimony of Doe, Walker, Kelly and Rogers.) *See Mary N. Bourke, 145 Fed. 909.*

IV.

The extra labor claimed for and the damage to keel blocks and wedges are simply matters and things incident to the docking of any vessel. It cannot be seen how a municipal corporation can have a lien for labor performed or for material or tools injured.

Finally, if we are liable at all in this matter, the account should stand as follows:

The statement as shown by the libellant is:

Services for docking vessel	\$10,533.60
Extra labor upon said vessel, 460	
hours at 30c	138.00
Damage to keel blocks and	
wedges	94.25
	<hr/>
Total	\$10,765.85
Credit by payment	7,294.55
	<hr/>
Balance due	\$ 3,471.30

Now from this should be deducted as follows:

15 days at \$119.70 per day	\$ 1,795.50	
Extra labor, 460 hours at 30c	138.00	\$3,471.30
Damage to keel blocks and wedges	94.25	2,027.75

Making a total of \$ 2,027.75 \$1,443.55
which leaves a balance due the Port of Portland, if
viewed in the most favorable light, of \$1,443.55, and
if there is to be a decree in this case for any amount,
it should not be for any sum exceeding this amount.

Respectfully submitted,

MILTON W. SMITH,
Proctor for Claimants and Appellants.

IN THE
United States Circuit Court
of Appeals
for the Ninth Circuit.

In Admiralty

The Steamship "Geo. W. Elder," her machinery, tackle,
apparel, etc.

J. H. PETERSON and C. P. DOE,
Claimants and Appellants.
vs.

THE PORT OF PORTLAND, a Corporation,
Libellant and Appellee.

Brief of Appellee

Appeal from the judgment of the United States District Court for the District of Oregon,

STATEMENT OF CASE

This is a proceeding in rem to subject the steamship "Geo. W. Elder" to the discharge of a lien for drydockage afforded the vessel during her repair.

In January, 1905, the steamship "Geo. W. Elder," having her home port at Portland, Oregon, and while engaged in the coastwise trade between Portland and

California points, was wrecked and sank in the Columbia River. After several unsuccessful attempts to raise her, the owners abandoned the vessel to the underwriters, who subsequently sold her to the claimant, J. H. Peterson, after her register had been closed.

In May, 1906, the vessel was raised by her then owners, and by them towed to, and docked upon, the drydock operated by The Port of Portland, at St. Johns, Oregon. She remained in drydock from May to September, 1906, undergoing repairs and alterations which were intended to, and did, fit her to resume her business of a coastwise steamer plying the waters of the United States.

When the vessel left the drydock and libellant sought to collect its stated amount for drydockage and incidental services, the claimants refused to pay a balance of some \$4788. Thereupon this proceeding was instituted to foreclose, by the process of the admiralty courts, the lien for drydockage which the libellant claims arose under local statutes.

The district court adopted as true the allegations of the libel *in toto*, and held that the services rendered were reasonably worth the amount charged; that there remained due four thousand seven hundred eighty-eight dollars; that under the Oregon statutes, libellant was empowered to charge for its services; and that by virtue of the local statute a lien arose in its favor against the vessel for services rendered her in her home port enforceable exclusively in admiralty.

POINTS AND AUTHORITIES

A lien arose in favor of libellant for the services rendered in the repair of the "Geo. W. Elder," by virtue of the Oregon statutes.

The Robert W. Parsons, 191 U. S. 17, 24 Sup. Ct. 8, 15-16.

Hardy vs. Ruggles, Fed. Cas. No. 6,062.

The Grace Meade, Fed. Cas. No. 15,243.

The Iris, 100 Fed. 104, 108.

MacMaster vs. One Dredge, 95 Fed. 832, 834.

And that lien, though created by local statute, is enforceable exclusively in the admiralty courts.

The J. E. Rumbell, 148 U. S. 1, 11.

Ex parte Easton, 95 U. S. 68, 75.

Am. Trust Co. vs. Fletcher & Co., 173 Fed. 471, 473.

Though the Elder was wrecked, submerged for some months, abandoned to the underwriters, and sold by them, and her register closed, she was a vessel in the sense that she was subject to liens for her repair to re-engage in commerce, which were enforceable in the admiralty courts.

The Progresso, 46 Fed. 292, 293.

The Marion S. Harris, 85 Fed. 798, 800.

The General Cass, Fed. Cas. No. 5,307.

The Cornelius Vanderbilt, 86 Fed. 789, 790.

ARGUMENT

The contentions made by appellant may, for convenience, be grouped as follows:

I. The Port of Portland has no power to charge vessels for drydockage.

II. The charges, if legally made, are unreasonable.

III. The services rendered did not give libellant a lien under the Oregon statute.

IV. The federal courts have no jurisdiction over this cause.

These points will be taken up in their order:

I.

Power of Port of Portland to Charge Vessels for Drydockage.

Appellant contends (1) that libellant is not empowered to charge vessels for drydockage, and (2) that if it is authorized to contract, the libel fails to state that a contract was entered into and that therefore a recovery in quasi contract is impossible.

As to the first point we call the court's attention to Bellinger & Cotton's Code, Secs. 4636 and 4639.

Undoubtedly the rule of strict construction of grants of power to municipalities obtains; but the *raison d'être* for the rule is the protection of the citizens, and when the reason fails, the rule ceases to be applicable. In our case the protection of the citizens and taxpayers requires that boats pay for drydockage furnished rather than that all comers be served without charge.

The second point might well be disregarded; but we would not pass it without remarking that the Oregon statute relating to liens is broad enough to include contracts express, implied in fact, and implied in law. The power of one who can make express contracts, to recover in an appropriate case by an action quasi ex contractu, we shall not discuss.

II.

Reasonableness of Charges.

Nothing need be said as to the reasonableness in the first instance of the charges for the use of the drydock, for it is shown by the evidence that the appellants were given a printed schedule of the rates then charged by The Port of Portland for the use of its dock (Transcript, pages 43-48, 122), and that this schedule was a published and public tariff (Transcript, pages 11, 112, 113, 121-3), and it is admitted in the answer that the vessel occupied the drydock from May 29th, 1906, to September 18th, 1906, both inclusive (Transcript, page 21).

The answer, however, in paragraph III (Transcript, page 22), alleges that the libellant negligently permitted the pontoons of the drydock to get out of alignment, and remain so, after due notice thereof, whereby the vessel's hulk became warped, twisted, hogged and greatly damaged.

At the trial, over objection of counsel for libellant, evidence was admitted tending to show that the time during which the Elder occupied the drydock was considerably extended by the neglect of libellant's employees to straighten up the keel so that the new steel section might be cut the exact length needed.

On cross-examination Mr. Doe, one of the claimants, speaking of the want of alignment, said (Transcript, page 147): "The fact of the boat being out of line in the early part of the work didn't cut any figure at all; so far as the work is concerned she could just as well have remained that way as the other, but it was when we began on the new construction it was necessary to put the

ship in line, and that was in the early part of July, and included a few days of the latter part of June."

The contract for the repair of the vessel, however, was not made until late in June, 1906, according to the testimony of Kelly, called by claimants. At page 189 of the transcript he testified as follows:

"Q. Mr. Kelly, your original contract was made with whom?

A. Mr. Peterson.

Q. Was it a verbal contract?

A. Well, the verbal contract was first. I met him down the street here, and he offered me a certain sum for to do the iron work, not no wood work at all, and I told him I thought with about five thousand dollars more on it I would take the job; so he says, 'All right, I will go you.'

Q. That was about when?

A. That was about probably June 20th or 21st, somewhere around about that.

Q. And on that you started to work?

A. Well, I started the next day. I seen him in the city and went down and started the next morning; I couldn't say exactly what date, but it would be four or five days before the 26th, before the original contract was made, the proper contract.

Q. Yes. Then it was after his talk with you and you actually starting in to work, that he got Mr. Walker to prepare the specifications, was it?

A. Yes."

Claimants' contention was that the delay was caused chiefly by their inability to ascertain the exact length of the keel and to insert it in its proper place.

Yet Kelly, who had charge of the installation of the keel, and who was a witness for claimants, seems not to

have considered the delay very serious, for he said (Transscript, page 191) :

“Q. You ordered the keel from Moran Bros.?

A. Yes, sir.

Q. When did you order it?

A. Well, I think I ordered the keel—oh, probably two or three days after we started in on the job. I ordered it a certain length, you know; I ordered it long enough; I couldn't get the exact length the condition the vessel was in, but in order to forward the work I ordered it longer than what we actually needed.

Q. When did you get that keel?

A. I think the keel came somewhere around about the 6th or 8th of August.

Q. Are you sure of that?

A. Well, I am not positive now, but I know it was pretty well about that.

Q. Have you any record to show when the keel was actually received by you?

A. No, I can't say we have, but if we would hunt up the old records we could get the bill of lading, that is the invoice; I think we have some of them yet; I am not certain, but that would give it.

Q. It was delivered at the drydock, was it?

A. Yes, it came down with the keel plates from Morgan's, was delivered down here at the drydock.

Q. At the drydock?

A. Well, yes, at the drydock; right at the drydock, yes.

Q. Now, the keel plates came along with the keel, did they?

A. Yes, sir.

Q. Now, until you got the keel you could do nothing, could you, in shape of getting it in finished shape for the work?

A. No, nothing. Well, we got some holes drilled; we got most of the holes drilled up there before it came down; that is clear. We could get the holes drilled where we were going to put new plates on, but where the old plates would work we couldn't drill them until we got the thing in proper shape; so I left them for the time.

Q. Now when that ship was gotten in line, how long would it take you to make the pattern for the keel?

A. Oh, probably the length of the pattern and the length of the keel, probably an hour.

Q. And as soon as you got your pattern, why then you could go to work on getting the keel in exactly the right length?

A. Oh, yes.

Q. It came over to you, did it not, finished, excepting that its length was not correct?

A. Its length was not correct."

The first request that the ship be carefully aligned seems to have been made on July 9th, according to Mr. Kelly.

"Q. When did you first speak to him about having the dock ready?

A. I spoke to him somewhere along about the 9th or 10th of the month.

Q. The 9th or 10th of July?

A. Yes, about that."

On the time when the delay was caused there is apparently a considerable difference of opinion.

Mr. Doe, one of the claimants (Transcript, page 150), on direct examination said:

"This delay occurred about the latter part of June and middle of July."

Mr. Walker expressed himself thus: (Transcript page 173).

“Q. Well now, Mr. Walker, in your estimate of fifteen days’ loss of time in the repair of the vessel owing to the dock not being kept in line, how much of that fifteen days was lost up to July 13th or 14th?

A. I should say three or four days were lost up to that time.”

Mr. Kelly had an idea that there was little delay prior to August 8th, when the keel arrived. (Transcript, page 195.)

“Q. But in what manner, if at all, Mr. Kelly, were you delayed by the fact of the vessel not being in line up to the time that the keel had arrived in Portland.

A. Well, we were not, you see, very much inconvenienced—delayed probably about four or five days.”

All the claimants’ witnesses agree that the Elder was placed in satisfactory alignment on August 18th. And it is also agreed by them that on Saturday, July 14th, she was practically aligned, but that the vessel fell out of line by the following Monday. (Transcript, pages 168, 184, 178.)

Yet on cross-examination claimants’ witnesses testify that after July 16th the libellant’s officers made serious attempts to put the keel in alignment; that they worked with diligence, and that it was the vessel’s weakened condition rather than any defect in the drydock that caused the delay in her alignment.

Doe said: (Transcript, page 168) “A. No, the first time it was put in line I think it was on a Saturday afternoon it was brought into line; and on Monday morning again it was out of line; more water had leaked

into the forward end. It was then that they began to get serious and straightened the dock."

Kelly said: (Transcript, page 184) "Well, on the 14th I think she was pretty fair; then Monday again she went out again, and then a few days afterwards we got her fixed up again, but she was dropping away more or less all the time; but we never got her properly into shape that we could do good until about the 18th of August.

Walker (Transcript, page 179) testified on cross-examination as follows:

"Q. But as I understand your testimony, you have no criticism to make as to the methods adopted by McIntosh to bring the ship in line after July 16th?

A. No, after July 16th they adopted the right methods of getting the vessel into line.

Q. Well, did they pursue their work with diligence?

A. They fairly well succeeded.

Q. And with diligence?

A. And with diligence."

As a cause for the delay in aligning the keel, Mr. Walker, on cross-examination, gave this reason: (Transcript, page 171.)

"Q. And you say then that the forward section was out of line?

A. Yes.

Q. And how much was it out of line then?

A. I can't tell you exactly at that time.

Q. Was it out of line in the manner in which Mr. Johnson described it as being out of line; that is down at the front?

A. It was down at the forward end, yes.

Q. At the forward end, and up at the after end?

A. Up on one corner.

Q. And what caused it then to be out of line?

A. The fact of there being a gap in the keel of the vessel and the keel of the vessel not being true and a part of the vessel being gone. As Mr. Johnson described it, a part of the shell plate was missing.

Q. It was not out of line then through any imperfection of the dock itself, was it, but owing to the fact that of the Elder being in the condition in which she was?

A. Well, for that class of a dock it was not defective, not to the best of my knowledge.

Q. Now, from the time you first visited the dock did you stay there continuously?

A. Daily, continuously."

Of the evidence introduced by libellant attention is directed simply to the log of the drydock, according to which the keel was received and installed on August 8th, 1906. (Transcript, page 235.)

From the evidence, we believe it clear that the delay, if any, was harmful only after the middle of July, that no request for perfect alignment was made prior to July 9th or 10th, that the vessel was well aligned on July 14th, but could not be kept so because of her weakened condition on a floating drydock, though the libellant was diligent in its efforts to align the vessel; that the keel did not arrive until August 8th; that it was immediately installed, and that any delay which may have occurred was due to difficulties incidental to and proximately caused by the break in the vessel and the inherent instability, to some degree, of a floating drydock.

Of the question of the reasonableness of the charges for destroyed keel blocks, and for extra labor, we need

say nothing. For the court's convenience, however, we append references to the testimony relevant to these questions. (Transcript, pages 79, 84, 85, 93, 94, 95, 152, 153.)

III.

The Lien Created by Local Statute.

Bellinger & Cotton's Code, Sec. 5706, reads in part thus: "Every boat or vessel used in navigating the waters of the state or constructed in this state shall be liable and subject to a lien:

(2) For all debts due to persons by virtue of a contract, expressed or implied, with the owners of a boat or vessel, or with the agents, contractors or subcontractors of such owner, or any of them, or with any person having them employed *to construct, repair, or launch* such boat or vessel, on account of labor done or materials furnished by mechanics, tradesmen, or others in the building, repairing, fitting and furnishing, or equipping such boat or vessel, or on account of stores and supplies furnished for the use thereof, or on account of launch ways constructed for the launching of such boat or vessel.

(3) For all sums due for wharfage, anchorage, or towage of such boat or vessel within this state."

Inasmuch as the services here in question were furnished the Elder in her home port, the lien, if any, arose exclusively by virtue of the statute.

It is libellant's contention that such a lien arose in its favor against the ship for two reasons: First, because the services were rendered in the *repair* of a vessel,

and secondly because the service was drydockage and comprehended within the term *recharfage*, as used in the statute.

The statute provides that a lien shall arise for services rendered in the construction, repair, or launching of a vessel. This would seem to indicate that the legislature intended to give a lien for all work directly concerned with the construction or alteration of a vessel in all its stages.

Now in our opinion the furnishing of a drydock, of a place in which to work, is the furnishing of services in the construction or repair of a vessel, just as much as if the libellant had furnished nails, or lumber, or steel to be incorporated in the vessel itself.

If the work done on the *Elder* was the construction of a new vessel, it must be admitted that no lien enforceable in admiralty arose.

Such is the doctrine announced in *The Robert W. Parsons* (1903), 191 U. S. 17; 24 Sup. Ct. 8, 10, where Justice Brown says: "It is equally well established that, for causes of action not cognizable in admiralty, whether in rem or in personam, the states may not only grant liens, but may provide remedies for their enforcement. Contracts for the building of a ship are the most prominent examples of such as are not maritime in their character, and hence within this rule."

People's Ferry Co. vs. Beers, 20 How. 393, 402.
Edwards vs. Elliott, 21 Wall. 532, 553 et seq.

But because of this very limitation upon the jurisdiction of the admiralty courts, inspired as it was by the

jealousy of the common law courts, the admiralty courts have been inclined to give a very liberal interpretation of the word "repair," in order to extend their jurisdiction and render aid to those who deserved it.

"As long as a vessel preserves her identity, any work done in the way of alteration, enlargement, or improvement, no matter how extensive, falls under the head of repairs and not of construction, and hence is a maritime contract, and may be the subject of a maritime lien."

26 Cyc. 764.

In *The Robert W. Parsons*, 191 U. S. 17, 24 U. S. 8, 15-6, the side of a canal boat was rebuilt and the value of the repairs estimated at \$154.40, and the boat was sold for \$155. Still, the court held that this alteration was a repair, rather than a construction of the vessel.

See also:

Hardy vs. Ruggles, Fed. Cases No. 6062.

The Grace Meade, Fed. Cases No. 15,243.

The Iris, 100 Fed. 104, 108.

McMaster vs. One Dredge, 95 Fed. 832, 834.

The claimants' own evidence (Transcript, pages 156-7; 213-5) furthermore discloses that the repaired vessel had the same engines, the same boiler, the same old lines, and even the same old name.

We believe, consequently, that from these authorities and facts it is deducible that the alterations made upon the *Elder* were for the purposes of the lien law, at least, repairs, that the furnishing of drydockage was a service rendered in the repair, and that therefore a lien arose in favor of libellant.

But if drydockage is not included under the classification of services rendered in the repair of a vessel, it surely is the furnishing of wharfage, and therefore covered by section 3 of the Oregon statute, and therefore libellant most certainly has a lien.

It remains to consider:

IV.

The Jurisdiction of the Federal Courts.

In *The J. E. Rumbell*, 148 U. S. 1, 11, the following propositions are treated as settled:

“First. For necessary repairs or supplies furnished to a vessel in a foreign port a lien is given by the general maritime law following the civil law, and may be enforced in admiralty.

“Second. For repairs or supplies in the home port of the vessel no lien exists or can be enforced in admiralty, under the general law, independently of local statute.

“Third. Whenever the statute of a state gives a lien, to be enforced by process in rem against the vessel, for repairs or supplies in her home port, this lien, being similar to the lien arising in a foreign port under the general law, is in the nature of a maritime lien, and therefore may be enforced in admiralty in the courts of the United States.

“Fourth. This lien, in the nature of a maritime lien, and to be enforced by process in the nature of admiralty process, is within the exclusive jurisdiction of the courts of the United States sitting in admiralty.”

That an analogous lien exists under the general admiralty law for wharfage furnished a foreign vessel is equally well settled.

Ex parte Easton, 95 U. S. 68, 75.

Cf. also *Am. Trust Co. vs. Fletcher & Co.*, 173 Fed. 471, 473 et seq.

Therefore, whether the lien here arose for services rendered in making repairs, or for wharfage, its enforcement is exclusively in admiralty.

But to avoid the inevitable conclusion, counsel for claimants makes one more and his final attempt to escape liability in the proceeding by asserting that the *Elder* was no longer a vessel within the admiralty jurisdiction at the time the services were rendered her by the libellant.

The uncontroverted evidence discloses that the *Elder* was wrecked, abandoned to the underwriters, her register closed, and the vessel allowed to lie partially submerged in the Columbia River for some sixteen or eighteen months.

Yet when she resumed navigation she had the same name, the same boiler, the same engines, the same model, the same old lines, in fact she was the same old ship repaired (*Transcript*, pages 155-7, 213-5).

She had never gone out of navigation, but had been simply incapacitated for a time by her wreck, and the inability of the owners or others to raise her. Her temporary withdrawal was an involuntary one, and in view of the numerous attempts to raise her, shows no intention on the part of her owners, to withdraw her from

navigation. When these services were rendered her she was in fact being prepared with all convenient speed for navigation. Physically and in the contemplation of her owners she at all times continued to be a vessel destined to continue her career as a coastwise steamer as soon as she could be repaired.

By her abandonment to the underwriters, and the closing of her register, she lost her rights under the law as an American vessel. But did she thereby cease to be subject to maritime liens enforceable in admiralty?

On principle it would seem that the mere fact of non-compliance with the rules relating to enrolment ought not to prevent the accrual of maritime liens against a vessel, where the policy of the admiralty law in giving such liens is so strongly in favor of the lienor that in the ordinary case, the lien is valid against even bona fide purchasers for value and without notice from one in possession and full control.

Authorities fortunately, however, are not wanting to sustain our position.

In *The Progresso*, 46 Fed. 292, which was an action in rem in admiralty to recover seaman's wages, it appeared that the vessel, under the name of the "Wells City," had sunk in New York harbor, been abandoned to the underwriters, and her register closed as a British vessel; it further appeared that the vessel had been raised by the underwriters, and sold to claimants; that the services sued for had been rendered while the vessel was afloat in New York harbor, when she had no name or purpose as a vessel, and was nowhere enrolled. The

question of admiralty jurisdiction was pressed as a defense.

Benedict, J., at page 293, said:

"The contract under which the libellant served was therefore the ordinary maritime contract of hiring on board a ship or vessel, unless the law be as contended on behalf of the claimant, that the fact that the ship at the time of the rendition of the services without a register, had no documents as a ship, and was without a name, deprived the services of any maritime character. I do not agree to this contention. The services contracted for and rendered were performed on board a ship, and in view of a contemplated voyage of the ship for the purpose of earning freight. The *Progresso* was no less a ship or vessel because she had no national character, and was without a name. She could navigate, indeed had navigated, and from the place where she was sunk to the Erie basin; she could be the subject of salvage services. Absence of national character or want of a name would not prevent her from navigating as a ship. She may not have been entitled to the rights and privileges of a vessel of the United States, but she was nevertheless a vessel capable of being employed in commerce as a ship, and a subject of maritime service. Such a service was rendered to her by the libellant, and by the maritime law a lien therefor attached to her. Upon the main question of the case, namely, that of jurisdiction, my opinion, therefore, is that the case is one within the admiralty and maritime jurisdiction of the United States."

See also:

The *Marion S. Harris*, 85 Fed. 798, 800.

The *General Cass*. Fed. Cases, 5,307.

The *Cornelius Vanderbilt*, 86 Fed. 789, 790.

That the lapse of a considerable period of time spent in repairing the vessel, or in attempting to raise her does not divest the admiralty jurisdiction seems clear. Length of time might be an evidence of an intent to abandon the use of the vessel for navigation, but where the vessel's withdrawal is involuntary, the result of accident, and the time intervening is used in raising and repairing her, and the services rendered are expressly intended to enable the vessel to resume navigation, there can be no question as to the purpose and intention of the owners.

Cf. also:

The Marion S. Harris (C. C. A. 1898), 85 Fed. 798.

The Progresso (D. C. 1891), 46 Fed. 292, 292.

The C. Vanderbilt (D. C. 1898), 86 Fed. 785, 789-790.

In conclusion, we submit that The Port of Portland is a *de jure* corporation, empowered to operate and to charge for services rendered by its drydock; that the charges made are reasonable, and within the terms of the contract entered into between the parties; that they were not increased through the fault of libellant's agents, but that the delay, if any, was caused by the unusual condition of the Elder when docked, and possibly by some instability inherent in a floating dry dock; that a lien arose for these maritime services, rendered, both in assisting in the repair of the vessel, and in furnishing wharfage; and that this statutory lien, being anal-

agous to those recognized under the general admiralty law, is enforceable exclusively in admiralty.

Respectfully submitted,

WOOD, MONTAGUE & HUNT,
Proctors for Libellant.

C. E. S. WOOD,
RICHARD W. MONTAGUE,
ISAAC D. HUNT,
ERSKINE WOOD,
Proctors and Advocates.

No. 2202

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

The Steamship GEORGE W. ELDER, her machinery, tackle, apparel, etc., J. H. PETERSON and C. P. DOE, <i>Claimants and Appellants,</i> VS. The PORT OF PORTLAND, <i>Libelant and Appellee.</i>	}
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APPELLANTS' PETITION FOR A REHEARNG.

To the Honorable William B. Gilbert, Presiding Judge, and the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Appellants respectfully request that the decision and judgment heretofore rendered and filed in this Court, affirming the judgment below be vacated and set aside, and that appellants be allowed a rehearing of their case.

A reading of the opinions both of the District Court and of this Court compels the conclusion that

one point in this case has never received proper or full consideration. Appellants submit that the decision that the statute of the State of Washington provided a lien for the charges sued upon is erroneous.

The opinion of the District Judge upon this important legal issue was as follows:

“As to the question of jurisdiction; regard is had to two factors only, which are determinative, namely, the purpose for which the craft was constructed, and the business in which it is engaged. When it is alleged that the vessel is plying the waters of the United States, which must be taken as the fact for the purpose of the exceptions, the business in which it is engaged appears to be maritime in character, and therefore the contract was with reference to a ship actually engaged in commerce. So it is that, during the repair of a vessel, it is often necessary that she be at a wharf, dock, or pier to be most conveniently and safely accessible. ‘The pecuniary charge in the nature of rent, to which vessels are liable for the use of a dock or wharf is called wharfage or dockage, and is the subject of admiralty jurisdiction.’ Benedict’s Admiralty (3d Ed.) Sec. 283. The term ‘dry dockage’ is employed by the libel, by which I presume is meant given dockage in a dry dock. The statute alluded to seems broad enough to comprise this kind of service.”

159 Fed. 1009.

It is evident that the lower Court was considering primarily the question of its jurisdiction,—that is whether the subject matter of the libel was maritime in nature. With nothing more than the

quotation from Benedict to support him, the district judge concluded that "the statute alluded to seems broad enough to comprise this kind of service". Again in the opinion filed herein, this Court was satisfied to quote the same excerpt from Mr. Benedict's text and to add:

"It is not disputed that the use of a dry dock was essential to the making of the repairs for the vessel in question, nor that the libellant furnished the dock so used and rendered the incidental services charged for. We agree with the Court below that the terms of the state statute are broad enough to embrace the service so rendered."

Thus on the basis of the fact that the use of the dry dock was essential to the making of the repairs, this Court has concluded that the rental charge for that use is made by the statute the subject of a lien. Appellants now invite the Court to a more careful analysis of the terms of the Washington statute, and to an examination of numerous authorities of unquestioned applicability to the end that it may be demonstrated that in deciding here that the state statute has given a lien for the rental charge of a floating dry dock, this Court has erred. The material provisions of the statute are as follows.

"Every boat or vessel used in navigating the waters of this state or constructed in this state shall be liable and subject to a lien—

"1. For wages due to persons employed, for work done or services rendered on board of such boat or vessel;

“2. For all debts due to persons by virtue of a contract, expressed or implied, with the owners of a boat or vessel, or with the agents, contractors, or subcontractors of such owner, or any of them, or with any person having them employed to construct, repair, or launch such boat or vessel, on account of labor done or materials furnished by mechanics, tradesmen, or others in the building, repairing, fitting, and furnishing, or equipping such boat or vessel, or on account of stores and supplies furnished for the use thereof, or on account of launch ways constructed for the launching of such boat or vessel;

“3. For all sums due for wharfage, anchorage, or towage of such boat or vessel within this state.”

Inasmuch as appellee in its brief (pp. 12 and 13) has urged that the charge for the use of the dry dock comes within both section 2 and section 3, we shall consider these contentions in that order.

Section 2 provides a lien for all debts due to persons by virtue of a contract (1) with the owners, (2) with the agents, contractors or subcontractors of such owner, or (3) with any person having them (lien claimants) employed to construct, repair or launch such boat or vessel on account of the following:

1. Labor done, or

2. Materials furnished by mechanics, tradesmen, or others, in the (1) building, (2) repair, (3) fitting, and (4) furnishing, or (5) equipping such boat, or—and here follow other matters clearly immaterial.

Appellee has said at page 13 of its brief:

“Now in our opinion the furnishing of a dry dock or a place in which to work is the *furnishing of services* in the construction or repair of a vessel.”

But the furnishing of services is not made by the statute the subject of a lien. The right is created *for labor done or materials furnished* in the building, etc., of a vessel. Appellants' charge for rental clearly cannot be held to be a charge for labor done or materials furnished, and thus no lien is given by section 2 of the statute.

Section 3 provides a lien for wharfage. If it can be said that the term “wharfage” includes the use of a floating dry dock, then the judgment of this Court is correct. But it is submitted that such a construction does violence to the meaning of the terms and is opposed to the spirit and theory of the decisions of the Courts.

It would seem that the error of the Court lies in the misunderstanding of the language of Mr. Benedict concerning “wharfage” and “dockage”. Inquiry both philological and legal will serve to determine this. In Webster's Universal Dictionary a wharf is defined as follows:

“A sort of quay, a wood or stone on a roadstead, harbor or river alongside of which ships or lighters are brought as for being conveniently loaded or unloaded.”

Wharfage is defined as

- “(1) The fee or duty paid for the privilege of using a wharf for loading or unloading cargo.
(2) Wharf facilities.”

A dock is defined as follows:

“A place ordinarily formed on the side of a harbor or bank of a river for the reception of ships, the entrance of which is sometimes closed by gates. *In the United States places between wharves are also called docks.*”

The following is the definition of a “floating dock”:

“A structure which serves as a dry dock being constructed so that it may be sunk so as to admit a vessel and then being raised with it and pumping out water from tanks or compartments round its sides.”

It is clear from these definitions that by the term “dockage” Mr. Benedict meant the use of the space between two wharves. And this contention is borne out by decided cases.

In the *City of Boston v. Lecraw*, 17 How. 426, at 434, it is said:

“A dock is defined by philologists, according to the American use of the term, to be ‘the space between wharves’.”

In *Ex parte Easton*, 95 U. S. 68, Mr. Justice Clifford spoke as follows:

“Wharf accommodation is a necessity of navigation, and such accommodations are indispensable for ships and vessels and watercraft of every name and description, whether

employed in carrying freight or passengers, or engaged in the fisheries. Erections of the kind are constructed to enable ships, vessels, and all sorts of water-craft to lie in port in safety, and to facilitate their operation in loading and unloading cargo and in receiving and landing passengers.

“Piers or wharves are a necessary incident to every well-regulated port, without which commerce and navigation would be subjected to great inconvenience, and be exposed to vexatious delay and constant peril.”

(p. 73.)

* * * * *

“Such erections are indispensably necessary for the safety and convenience of commerce and navigation, and those who take berth alongside them to secure those objects derive great benefit from their use. All experience supports that proposition and shows to a demonstration that the contract of the wharfing appertains to the pursuit of commerce and navigation.

“Instances may, doubtless, be referred to where wharves are erected as sites for stores and storehouses; but the great and usual object of such erections is to advance commerce and navigation, by furnishing resting-places for ships, vessels, and all kinds of water-craft, and to facilitate their operation in loading and unloading cargo and in receiving and landing passengers.”

(p. 73-74.)

* * * * *

“Water-craft of all kinds necessarily lie at a wharf when loading and unloading; and Mr. Benedict says, that the pecuniary charge for the use of the dock or wharf is called wharfage or dockage, and that it is the subject of

admiralty jurisdiction; that the master and owner of the ship and the ship herself may be proceeded against in admiralty to enforce the payment of wharfage, when the vessel lies alongside the wharf, or at a distance, and only uses the wharf temporarily for boats or cargo. Benedict, Adm. (2d Ed.) Sect. 283."

(pp. 76-77.)

In *The Brooklyn*, 46 Fed. 132, Judge Brown held:

"The terms 'dockage' and 'wharfage' are synonymous. They are used interchangeably, as the last cited statute shows. Wharfage or dockage is a charge for the use of a wharf or dock. It may accrue from the use of the dock in mooring for the purposes of protection and safety only. *The George E. Berry*, 25 Fed. Rep. 780. But in this port such a charge is ordinarily for the purpose of loading or unloading cargo on the dock, and that includes necessarily a berth for the vessel, and a place of deposit for the cargo."

Judge Shipman, speaking for the Circuit Court of Appeals for the Second Circuit in *The Idlewild*, 64 Fed. 603, held at page 605:

"Wharfage is 'a pecuniary charge, in the nature of rent, to which vessels are liable for the use of a dock or wharf' (1 Ben. Adm. Sec. 283); in other words, for the use of real estate."

The meaning of the term "dockage" is further exemplified in the decision of the Supreme Court of California, in bank, speaking through Chief Justice Beatty, in *People v. Roberts*, 92 Cal. 659, at p. 664:

"As to the second proposition, it is clear that the word 'wharfage', in the act of 1880,

is used in the same sense in which it is used in section 2524 of the Political Code; that is to say, in contradistinction to the word 'dockage'. Section 2524 of the Political Code, along with many other important provisions, limits and defines many other important provisions, limits and defines the power of the board of harbor commissioners, and prescribes their duties as to the collection of harbor, dues, etc. Throughout the section, the word 'wharfage' is used to designate the charge against merchandise for the use of the wharf, while the word 'dockage' is used to designate the charge against vessels for the privilege of mooring to the wharves or in the slips."

It is plain from these decisions that when it is said that "dockage" is included in the term "wharfage" it is only where the term "dockage" is employed as designating the mooring of vessels in connection with the use of wharves. Clearly, there is a wide distinction between a wharf and a floating pontoon dry dock; also between the purposes for which each is employed.

The meaning of "wharfage" has often been adjudicated. In

Transportation Company v. Parkersburg, 107
U. S. 691, 696,

it was said:

"Wharfage is a charge for the use of a wharf."

In *The Geo. E. Berry*, 25 Fed. 780, Judge Brown held at page 481:

"Wharfage in its most general legal sense doubtless includes the mooring of vessels for

the protection of life and safety, as well as for loading and unloading the cargo.”

In *The James T. Furber*, 129 Fed. 808, 810, it was held:

“By the term ‘use of a wharf’ it is evident that nothing more was intended than ‘wharfage’, which distinctly and obviously relates to the navigation business or commerce of the sea, and has always been regarded as among the usual and necessary port charges of a vessel. ‘Wharfage’ is the use of a wharf furnished in the ordinary course of navigation.”

To show further how far apart “wharfage” is from the use of a floating dry dock, it is interesting to note the case of

Walsh v. New York Floating Dry Dock Company, 77 N. Y. 448.

There an action was brought to recover *wharfage for the use of a wharf by defendant’s floating dry dock*. The only reason why the charge was there denied was that although the dry dock occupied a greater part of the slip between the piers, it was attached to an adjacent pier. The position of the structure was not such as under the law entitled the lessee of the wharf to maintain his claim for wharfage.

The distinction is further shown by the fact that in

Cope v. Vallette Dry Dock Company, 119 U. S. 625,

a case of salvage for services rendered in assisting the company’s floating dry dock was appealed to

the highest Court. The claim was there denied upon the ground that the floating structure was not designed for navigation.

These decisions conclusively show the fallacy of the conclusion which this Court has reached. They make it plain that the use of a floating pontoon dry dock cannot be held to come within the meaning of the term "wharfage". A wharf and a floating dry dock are two entirely different structures, having nothing whatever in common and being used for entirely different purposes. The Washington statute in providing a lien for wharfage gave no basis whatever for the maintenance of the libel at bar and this Court cannot upon a reconsideration of this question avoid the conclusion that there was no lien and that the judgment of the District Court should be reversed.

Dated, San Francisco,
September 30, 1913.

Respectfully submitted,

MILTON W. SMITH,
*Proctor for Appellants
and Petitioners.*

CHARLES H. SOOY,
DAVID L. LEVY,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellants and petitioners in the above entitled cause

and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and not interposed for delay.

DAVID L. LEVY,
*Of Counsel for Appellants
and Petitioners.*

No. 2229 5

United States
Circuit Court of Appeals
For the Ninth Circuit

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,
Appellant,

vs.

JAMES M. HANLEY,
Appellee.

Transcript of Record

Upon Appeal from the United States District Court
for the Eastern District of Washington
Northern Division

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DEC 27 1912

No. _____

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Appellee.

Transcript of Record

Upon Appeal from the United States District Court
for the Eastern District of Washington
Northern Division

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R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,

Appellant,

vs.

JAMES M. HANLEY,

Defendant.

ADDRESSES AND NAMES OF SOLICITORS
OF RECORD:

CHARLES P. LUND, Esquire, Old National Bank
Building, Spokane, Washington,

Solocator for Appellant.

L. J. BIRDSEYE, Esquire, The Ziegler Block, Spokane,
Washington,

Solicitor for Appellee.

No. 964.

*In the District Court of the United States for the Eastern
District of Washington.*

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,

Complainant,

vs.

JAMES M. HANLEY,

Defendant.

COMPLAINT.

*To the Honorable Judge of the United States District
Court for the Eastern District of Washington:*

R. F. Knight, as Trustee in Bankruptcy of James P. Hanley, a bankrupt, brings his bill of complaint against James M. Hanley and thereupon your orator complains and says:

I.

On August 25th, 1910, James P. Hanley filed his petition in bankruptcy in the United States District Court for the Eastern District of Washington, and on August 26th was adjudicated a bankrupt.

II.

On September 7th, 1910, the complainant was appointed trustee of said bankrupt, and thereafter qualified and is now the trustee of said bankrupt.

III.

On May 2d, 1910, said bankrupt, James P. Hanley, and his wife, Katherine Hanley, were owners as community property under the laws of the State of Washington, of Lots Five (5), Six (6) and Sixteen (16) and Eighteen (18), in Block Seven (7) of Northeast Addition to Ross Park, an addition to Spokane, Spokane County, Washington, and on said date executed and delivered to the defendant James M. Hanley, a deed of conveyance of said real estate, which said deed was thereafter filed for record in the Auditor's office of Spokane County, Washington, and is recorded in Book 264 at page 604 of the Records of Deeds in said office, and said defendant, by virtue of said conveyance, claims to be the owner in fee of said real estate.

IV.

Said conveyance was so executed and delivered by said James P. Hanley and Katherine Hanley, his wife, to the defendant, without any present consideration, or any consideration therefor whatsoever from said defendant, or at all, and at the time of the execution and delivery of the said deed, said James P. Hanley and Katherine

Hanley, his wife, were insolvent, and said conveyance was so made to the defendant, who is a son of the said James P. Hanley and his wife, Katherine Hanley, the grantors in said deed of conveyance, for the purpose and with the intent to hinder, delay and defraud the creditors of said bankrupt.

V.

The assets of said bankrupt listed in his schedule in said bankruptcy proceeding, and the assets of said bankrupt known to said trustee and which have come into his possession, are insufficient to pay the claims of creditors which have been filed with and approved by the referee in bankruptcy of said Court, and with the real estate covered by said conveyance will be insufficient to pay the claims of creditors of said bankrupt whose claims have been so filed and allowed.

To the end, therefore, that your orator may have relief which he can only obtain in a court of equity, and that said defendant may answer the premises (but not on oath or affirmation, the benefit whereof is hereby waived by your orator) he now prays that said deed of conveyance of May 2d, 1910, from James P. Hanley and Katherine Hanley, his wife, to the defendant, James M. Hanley, covering lots 5-6-16 and 18, in Block 7 of Northeast Addition to Ross Park, an addition to Spokane, Spokane County, Washington, be held fraudulent and void, and that same be cancelled and held for naught, and that James M. Hanley be required to surrender and deliver possession of said real estate, and that the defendant be adjudged to have no right, title, estate or interest in and to said premises described in said deed, and that the com-

plainant be decreed to be the owner thereof and entitled to the possession of the same, and his title thereto quieted.

And that your orator may have such other and further relief as the nature of this action may require and as to this Court may seem proper and agreeable to equity.

May it please your Honors to grant to your orator a writ of subpoena, to be directed to the said James M. Hanley thereby commanding him at a certain time, and under certain penalty therein to be limited, personally to appear before this honorable Court and then and there full, true, direct and perfect answer to make to all and singular the premises and to stand, perform and abide by such order, direction, and decree as may be made against him in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

(Signed) CHARLES P. LUND,

Solicitor for Complainant and of Counsel.

UNITED STATES OF AMERICA,
STATE OF WASHINGTON,
County of Spokane—ss.

R. F. Knight, being first duly sworn, on his oath says: I am the duly appointed, qualified and acting Trustee in Bankruptcy of James P. Hanley, a bankrupt, and complainant in this action; I have read the foregoing bill of complaint, know the contents thereof, and the same is true as I verily believe.

(Signed) R. F. KNIGHT

Subscribed and sworn to before me this 19th day of October, 1910.

(Notarial Seal) (Signed) CHARLES P. LUND,
*Notary Public in and for the State of Washington, Re-
siding at Spokane, Wash.*

Endorsements: Complaint.

Filed in the U. S. District Court, Eastern District of Washington, November 2d, 1910.

W. H. HARE, *Clerk.*

No. 964.

*In the District Court of the United States for the Eastern
District of Washington, Eastern Division.*

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,
Complainant,

vs.

JAMES M. HANLEY,

Defendant.

ANSWER.

The answer of James M. Hanley, the defendant in the above entitled cause, to the Bill of Complaint of R. F. Knight, trustee in bankruptcy of James P. Hanley, a bankrupt, the complainant therein.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained for answer thereto, or to so much thereof as this defendant is advised is material

or necessary for him to make answer to, answering, says:

1. This defendant admits that on August 25th, 1910, James P. Hanley, named and mentioned in said bill of complaint herein, filed his petition in bankruptcy in the United States District Court for the Eastern District of Washington, Eastern Division, and on August 26th, 1910, was adjudicated a bankrupt.

2. This defendant, further answering, says that he knows not, and has no knowledge or information, and therefore can not say as to, or upon his belief or otherwise, whether the complainant was on September 7th, 1910, or at any other time, appointed trustee of the said bankrupt, or whether the complainant thereafter, or at any time, qualified, or is now, or at any time was the trustee of said bankrupt, and therefore this defendant denies the same and each and every part and the whole thereof and asks and prays full, competent and legal proof of the same and of each and every part and the whole thereof.

3. This defendant further answering, says and admits, that on or about May 2d, 1910, said James P. Hanley and Katherine Hanley, his wife, or one or the other of them, were the owners of Lots Five (5), Six (6), Sixteen (16) and Eighteen (18), in Block Seven (7), of the Northeast Addition to Ross Park, an addition to Spokane, Spokane County, State of Washington; and this defendant says and admits that on said date the said James P. Hanley and Katherine Hanley, his wife, executed and delivered to this defendant a deed of conveyance of said real estate, which said deed was thereafter

filed of record in the office of the Auditor of Spokane County, Washington, and is recorded on page 604 of book 264 of the Records of Deeds in said office, and that this defendant, by virtue of said conveyance, claims to be the owner in fee of said real estate. But this defendant further says that, as to whether at said time of the conveyance to him of said real estate, as aforesaid, the said James P. Hanley and Katherine Hanley, his wife, were the owners of said real estate as community property, under the laws of the State of Washington, this defendant knows not, has no knowledge or information, and can not say, as to or upon his belief or otherwise, and therefore this defendant asks and prays full, competent and legal proof of the same and of each and every part and the whole thereof. And this defendant further says, that at the said time of the conveyance of said real estate to him, as aforesaid, by the said James P. Hanley and Katherine Hanley, his wife, the said James P. Hanley was not bankrupt, but that said James P. Hanley was then wholly solvent, and, as this defendant is by the said James P. Hanley informed and verily believes, and upon such information alleges the facts to be, the said James P. Hanley then had no expectation, anticipation or apprehension of insolvency or bankruptcy upon his part, and no cause or reason to apprehend or expect that he would ever become or be insolvent or bankrupt.

4. Further answering, this defendant says that he denies that said conveyance was so, or otherwise, executed or delivered by the said James P. Hanley and Katherine Hanley, his wife, or either of them, to this defendant without any present consideration or any con-

sideration therefor whatsoever from this defendant or at all, and this defendant says that he denies that at the time of the execution and delivery of the said deed as aforesaid, the said James P. Hanley and Katherine Hanley, his wife, or either of them, were insolvent; and this defendant further says that he denies that said conveyance was so or otherwise, made to him, this defendant, who, he says and admits, is a son of the said James P. Hanley and Katherine Hanley, his wife, the grantors in said conveyance, for the purpose or with the intent to hinder, delay or defraud the creditors, or any of the creditors, of said James P. Hanley.

5. Further answering, this defendant says that at the time the said James P. Hanley and Katherine Hanley, his wife, executed and delivered to this defendant said deed of and for the said above described real estate, as aforesaid, this defendant paid the said James P. Hanley and Katherine Hanley, his wife, an actual, full, adequate and bona fide price and consideration for all of said real estate, to-wit: the sum of (\$1500.00) Fifteen Hundred Dollars, from and out of this defendant's own funds and money which he then possessed and owned and which was this defendant's absolute property; and that the said James P. Hanley and Katherine Hanley, his wife, then received and accepted from this defendant said price and consideration for all of said real estate and thereby actually and in good faith sold said real estate to this defendant.

6. This defendant further answering, says that at the same time, the said James P. Hanley and Katherine Hanley, his wife, executed and delivered to this de-

defendant said deed of and for the said real estate, as aforesaid, the said James P. Hanley and Katherine Hanley, his wife, were both wholly solvent and in good business and financial condition, and as this defendant is by them informed and verily believes and upon such information and belief alleges the facts to be, were wholly without any thought, expectation, apprehension or intimation of insolvency or bankruptcy as to or upon the part of either or both of them; that this defendant did not then, or for a considerable time thereafter, have any knowledge, information, belief, expectation or apprehension of the insolvency or bankruptcy of either the said James P. Hanley or Katherine Hanley, his wife, but purchased said real estate from said James P. Hanley and Katherine Hanley, his wife, and paid them fully and adequately therefor and received from them their said deed and conveyance thereof, all as aforesaid, in the utmost good faith, and that thereby this defendant became and is the absolute, actual and bona fide owner of all of said real estate in fee simple. This defendant further says that at the time of the execution and delivery of the said deed to him by the said James P. Hanley and Katherine Hanley, his wife, and of their sale and conveyance of said real estate to him, all as aforesaid, the said James P. Hanley was engaged in and carrying on a large logging, sawmill and lumber business at and near the town of Northport, in the County of Stevens, State of Washington, and had apparently and in fact ample resources and credit, and appeared to be, and was in good, sound and solvent business and financial condition; but that thereafter the said James P. Hanley was

unable to advantageously market a large stock of lumber which he then had on hand in his business, and together with his said wife, Katherine Hanley, became involved in litigation with T. B. Moore and Theo. C. Sherwood, co-partners doing business as the Crescent Lumber Company, who on or about July --, 1910, in said litigation sued out and caused to be issued an attachment against the property of the said James P. Hanley and Katherine Hanley, his wife, and thereunder attached substantially all of the property of the said James P. Hanley and Katherine Hanley, his wife, and that thereby the other creditors of the said James P. Hanley were alarmed and caused to press their claims and demands against the said James P. Hanley, and thereby the said James P. Hanley's credit and business were ruined, and because thereof, he then became insolvent and was forced into bankruptcy.

7. And further answering, this defendant says he knows not, and has no knowledge or information, and can not say, as to, or upon his belief or otherwise, whether, and, therefore, denies, that the assets of said bankrupt listed in his schedule or schedules in said bankruptcy proceedings or the assets of said bankrupt known to said trustee, or which has come into his possession, are sufficient to pay the claims of the creditors, which have been filed with or approved by the referee in bankruptcy of said court, or, with the real estate conveyed by said conveyance, will be insufficient to pay the claims of the creditors of the said bankrupt, whose claims have been so filed or allowed; and therefore, this defendant asks

and prays full, competent and legal proof of the same and of each and every part and the whole thereof.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill of complaint charged. All of which matters and things this defendant is ready and willing to maintain and prove as this Honorable Court shall direct; and humbly prays that the complainant's said bill may be dismissed at his own proper costs, and that this defendants' title to and ownership of all the said above described real estate be confirmed and quieted in him against any and all claims thereto or to any part thereof, by or upon the part of the complainant; and that this defendant be dismissed hence with his reasonable and proper costs and charges in this behalf most wrongfully sustained.

(Signed) L. J. BIRDSEYE,

Solicitor for Defendant and of Counsel.

STATE OF WASHINGTON,

County of Spokane—ss.

I, James M. Hanley, being first duly sworn, depose and upon my oath say: That I am the above named defendant in the above entitled action, and who makes the foregoing answer therein; that I have read said answer and know the contents thereof, and that said answer and all its allegations are true, except as to the allegations of said answer which are made upon information and belief as therein alleged, and that as to such allegations of said answer I verily believe same to be true.

(Signed) JAMES M. HANLEY.

Subscribed and sworn to before me by the said James M. Hanley this 29th day of November, 1910.

(Seal)

(Signed) E. D. RAY,

Notary Public in and for the State of Washington, Residing at Spokane, Washington.

Endorsements: Due service of the within Answer upon the undersigned this 30th day of November, 1910, is by the undersigned hereby accepted and admitted this said day.

(Signed) CHAS. P. LUND,

Endorsements: *Solicitor for Complainant.*

Answer.

Filed November 30, 1910.

W. H. HARE, *Clerk.*

In the District Court of the United States for the Eastern District of Washington, Eastern Division.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,
Complainant,

vs.

JAMES M. HANLEY,

Defendant.

REPLICATION.

The replicant, R. F. Knight, Trustee in Bankruptcy of James P. Hanley, a bankrupt, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant James M. Hanley, for replication thereunto says that he does and will aver, maintain and prove the said

bill to be true, certain and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied, is true, all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) CHARLES P. LUND,

Attorney for Complainant.

STATE OF WASHINGTON,

County of Spokane—ss.

I, R. F. Knight, being first duly sworn on my oath depose and say:

That I am the replicant named in the foregoing replication. I have read said replication, and am well acquainted with the contents thereof, and I say that the matters and things therein set forth are true, and that as to the matters and things which are therein alleged upon information and belief I believe it to be true.

(Signed) R. F. KNIGHT.

Subscribed and sworn to before me this 21st day of December, 1910.

(Seal)

(Signed) CHARLES P. LUND,

Notary Public in and for the State of Washington, Residing at Spokane, Wash.

Endorsements: Replication.

(Testimony of James P. Hanley.)

Filed in the U. S. District Court, Eastern District of Washington, December 29, 1910.

W. H. HARE, *Clerk.*

In the District Court of the United States for the Eastern District of Washington, Northern Division.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY,

Complainant,

vs.

JAMES M. HANLEY,

Defendant.

Be it remembered, the above entitled cause came on to be heard at Spokane, Washington, the 4th day of January, 1912, at 10 o'clock A. M., before Honorable F. H. Rudkin, Judge.

C. P. Lund appeared on behalf of complainant.

L. F. Birdseye appeared on behalf of defendant.

Thereupon the following proceedings were had and done, and the following exhibits were offered and received in evidence, to-wit:

JAMES P. HANLEY, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

My name is James P. Hanley; I am the father of James M. Hanley, the defendant in this case. I couldn't hardly tell you when I first engaged in the sawmill business in this country. I had my first mill at Deer Park; up above Deer Park, although I had been in the lumber business before that. I established a mill up there, or

(Testimony of James P. Hanley.)

acquired an interest in one; I disremember what year that was; I could not tell you. I ran the sawmill at Deer Park till 1908, I believe. I ran it up until 1908; I couldn't tell you how many years I ran it; probably five or six. I then moved to Northport, Washington. I did not move my mill up there; I might have moved a part of this planing mill up there, a few things, not much. I went up to Northport and established a mill there. I think I started in 1907 to build at Northport. I did not operate that mill continuously until I filed my petition in bankruptcy; it was idle for awhile. I operated it spasmodically; I operated it when the weather was favorable to run it, not in the winter time. I had something over ten thousand dollars in cash when I moved to Northport, when I started in business there to build that mill; that was in cash; I had a stock of lumber besides; the stock of lumber I had must have been between a million and a half and two million feet of lumber, at Deer Park; that is my old mill; that I sold out later; I could not tell you how much I realized for that lumber, the net amount; I do not know it approximately; I do not know within four or five thousand dollars how much I realized on it; it is on the books; Mr. Wentworth has all the books; I couldn't tell you offhand. I could tell you how much a thousand the different grades brought, but how much the whole amount came to I could not tell you. I bought a piece of ground up there, two or three acres. I disremember how much I did pay for that. I am not sure whether it was about a thousand dollars.

(Testimony of James P. Hanley.)

Q. You bought two pieces; you paid one hundred dollars for one small piece and something less than a thousand for the the other, making thirteen acres in all, or thereabouts

A. Yes, sir; I believe it was; I am not positive.

I started to build my mill; I don't know how much money I invested in the construction of that mill and in the machinery; I couldn't tell you offhand. In the building of it—let's see—it must have cost altogether about twenty-five thousand dollars for the mill and timbers and machinery, equipments and everything; that just about represented my investment up there. I couldn't tell you when I did acquire these four lots that are involved in this lawsuit either, without looking at the record; if you look at the record you can see when I acquired them. I was the owner of these four lots prior to the time I deeded them to my son. Me and my wife made the deed to my son, James M. Hanley. These four lots in Spokane, I owned them probably two or three years, maybe. As to the use I put those lots to, I had a lumber yard on them for a year, about a year. Myself and Joe P. Kelly were running a retail yard down there. We bought our lumber from different parties; some from the Acme Lumber Company; some from the Buckeye; some from myself, and different places all over. Part of those lots I acquired before I moved to Northport. As a matter of fact, one of those lots, there was a balance due on, and that balance was paid to Mr. Moore along about the 11th of August, 1910, shortly before I filed my petition in bankruptcy. He took up the deed for

(Testimony of James P. Hanley.)

me and put it on record. That was one of the lots that I had previously conveyed to my son.

Q. Now, Mr. Hanley, your wife, did you and your wife—what time were you married?

The COURT: Does the community or the separate character of this property make any difference?

Mr. LUND: I think it is material.

Mr. BIRDSEYE: I will concede that it is community property; I think it is.

The WITNESS: Mrs. Hanley bought a house and lot up in Lidgerwood Park in this city. I could not tell you, I am sure, how long we owned that; I think it is about 1894 we started to build; 1904; I am not positive; I think that is the time. That is claimed as her separate property. The title was in her name on this 2d day of May, 1910, this Lidgerwood property. On the 2d day of May I caused the deed to be executed, me and my wife caused a deed to be executed to my son Jim for these four lots. That deed was executed at Colville. I caused it to be executed. I don't know the notary's name who made it out in Colville there; I don't know that it was W. L. Sax. It was the abstractor. Jim was not there at that time; he was at Northport. After the deed was made out I gave it to Jim. I gave it to him on the 3d of May. At the same time I and my wife did not cause a deed to be executed to our daughter Katherine for the Lidgerwood property in Spokane. That was afterwards, in July.

Q. What time in July?

(Testimony of James P. Hanley.)

Mr. BIRDSEYE: We object to further testimony as to that and ask that the testimony given be stricken out, because it was too late in reference to the deed on the 2d of May, or when the deed was executed.

Mr. LUND: I will say that the deed was not filed until the 2d of July, although it was dated the 2d of May.

The Court overruled the objection.

To which ruling the defendant duly excepted.

The WITNESS: I don't exactly remember the date I and my wife executed the deed of this Lidgerwood property to my daughter. If you should tell me the date I wouldn't know whether it was the right date or not; I don't know, I am sure, whether it was the 3d of July, or the day before the 4th. I don't know anything about, as a matter of fact, that this deed to my son Jim was not filed for record in this county until the 22d; I don't know anything about the deed after I gave it to him. I claim that he paid me fifteen hundred dollars in cash at the time that the deed was delivered to him. The money was paid in cash, paper and gold. I don't remember just the exact amount of paper and how much gold. There was more paper than gold. I couldn't tell you the exact amount of each kind; I answered that before in the referee's office. I told you I couldn't tell you. There was gold in tens and twenties and fives; the paper was mixed the same way. During the time I had been carrying on my business at Deer Park and Northport I did not do business with the First State Bank of Deer Park all the time. I done business with the Exchange Bank and Spokane and Eastern Trust Company until I met Mr.

(Testimony of James P. Hanley.)

down at the depot and he induced me to do business with him, at the First State Bank of Deer Park; the books will show that. I do not know the date. I could not tell you how long I had been doing business with the First State Bank of Deer Park at the time I filed my petition in bankruptcy; it may have been one or two or three years; it was from one—I couldn't tell you the exact date, or how long. I did not say that I did all of my banking with them from the time I went there; I had another account at the Spokane and Eastern Trust Company in Spokane, in my name. I had an account at the Spokane and Eastern at the same time I had one at the First State Bank at Deer Park; I had an account with the Spokane and Eastern at the time I was dealing with the Exchange National. I don't know that I did deposit this fifteen hundred dollars in the usual course of business at the bank; I don't know whether I did or not. I am not positive whether or not I did deposit any part of that in the bank on or about the 2d or 3d day of May, or along about there. I am not positive whether I testified before in my examination before the referee that I didn't deposit it in the bank. If I did so testify that is probably so. I do not know whether I deposited any of that money in my bank; I told you I did not. I don't know whether Jim had this money, this fifteen hundred dollars; I don't know a thing about it; I don't know where he got his money from. I don't know where he had it when he paid it to me; he brought it in and paid it to me; he paid it to me in Northport, at the place where we were living. We were living in one of the

(Testimony of James P. Hanley.)

smaller houses; you wouldn't know if I told you, you have never been up there; we were living in Northport; he gave it to me in the house where I and Mrs. Hanley were living. It was all in money. It was in the evening on the 3d. I got home with the deed the afternoon of the 3d. I did not call him in. I had some arrangement with him previous to that, or I wouldn't have went down and made the deed out, if I didn't.

Q. Couldn't you have made it out at Northport?

A. I was down there (Colville) on business, so I made it out there; there was a notary there with a seal.

There was also a notary at Northport with a seal; he was a railroad man and probably wasn't there at the time; I disremember the particulars about it. I don't know where Jim had any more money than the fifteen hundred dollars with him at the time. I did not see any other money, only the fifteen hundred dollars. I paid part of my debts with the fifteen hundred dollars.

Q. What debts did you pay with this fifteen hundred dollars?

A. Well, I just got a letter from Turner here, when you put that question to me before, I wrote to him to find out how much I paid. I paid three hundred and seventy-five dollars to Mr. Turner, according to his letter; that is the credit I got on his books; do you want to see it? (Handing the letter to the Court.) I say that I paid three hundred and seventy-five dollars, according to his (Mr. Turner's) books. I did not pay that by check, he says not. I don't know anything about it, except what that letter states; I don't know the exact

(Testimony of James P. Hanley.)

amount; I know I paid him cash. I didn't keep track of every item in cash I paid.

Q. Whom did you pay any more money to

A. Well, I paid to the Spokane & Northern Railroad Company and I paid to Mrs. _____, down here where I used to room, and to restaurants around, and to shows, and probably for clothes, and some of it to my wife. I didn't keep the items as to how much I paid, an itemized account of it; I could not tell you the exact amount I paid to anybody; I am not keeping an itemized account of what I spend now. I did not carry this fifteen hundred dollars around with me, not that I know of. I left part of it in the box I had in Spokane here; safety deposit box. I left it there when I came to town, probably, only what I needed; when I would come in I would get what I needed, what I wanted. I do not know how much money I left in the box at any particular time. I put that price of four thousand dollars on the lots on account of the Burlington road and the Great Northern was intending to come through there at that time. They bought all of the property along through Lidgerwood, and all people in that vicinity thought that is where the road was coming through from the Burlington. I had in making some statement listed that property as assets to the extent of four thousand dollars. The Great Northern had no spur there; I put the spur in myself to the lots.

Q. Did you consider they were worth four thousand dollars?

(Testimony of James P. Hanley.)

A. Well, I didn't know; if I could get a speculator to buy them, like the rest of them, for that, I would sell them; I never put a value on them. When I turned this property over to Jim I took into consideration that it was more than I paid for it, and I needed the money; the bank was writing me every once in awhile they could not let me have any more money and they would try in another week or two, if times were a little better, I could have then some more. So that is the way it went, and I was pushed all of the time. I was not so hard up; I had lots of collateral, but I did not have the cash, on account of having to hold the 1909 year's cut of lumber for the Crescent Lumber Company, did not sell but three car-loads in 1909; I had plenty of collateral, but not the money. At this particular time, the 2d of May, I was indebted to the State Bank of Deer Park; I don't know, about twenty-seven thousand dollars; I can tell you pretty near (referring to memo). I don't think it was quite as much as that; it might have been, but I don't think it was; I think it was about twenty-four thousand dollars about that time, at that time.

Q. Twenty-four thousand and interest?

A. This is March 16th; it might have been by the 2d of May; I am not positive. All of that paper was due at that time in this respect, that the notes were made out for ninety days, on account of the bank examiner not allowing them to make loans any longer than ninety days, and they renewed them every ninety days. I could not tell you whether they were all past due or not; I have not any with me.

(Testimony of James P. Hanley.)

Q. You had some when you made up your schedule to show the date of the maturity of those notes?

The COURT: It is so near, it would not make much difference anyhow.

The WITNESS: I was indebted at that time to the Crescent Lumber Company in the sum of something like probably eleven thousand dollars; I ain't sure; I will see.

The COURT: That is close enough.

Q. And that was money that had been advanced by this Crescent Lumber Company, where they would have a lien on the stock, and as the stock was cut you would give them a bill of sale of particular lumber; is not that correct?

A. To secure their seven dollars a thousand, I had a contract with them. They were to take seven dollars a thousand out of the lumber and apply it on their debt and turn over to me the difference, under our contract.

Q. But the lumber was segregated and you would give them a bill of sale of all of that lumber that you cut; is not that correct?

A. That was for to protect them against damage suits; that was the understanding, in case anything should happen in the mill, or a man got hurt, they wanted to have their money protected. They wanted to have their lumber protected, so in case of any damage suits, or anything coming up, or anybody hurt in the mill, the lumber would not be liable for the damages. I don't know I was owing to other people at that time; I did not make up a statement at that time; I have got a statement made out March 16th; I can tell you about then.

(Testimony of James P. Hanley.)

I could not tell you about May 2d exactly, without looking over the books. I claim there was something like two thousand dollars due my son John for wages up to August. That was at the rate of two hundred dollars a month for pretty nearly two years, or a year and a half back, that was due. I claim there was about eight hundred dollars due my son Jim, and that was due at that time. I claim there was something due my other son, a minor, that is later on; that was in July, I think, that he went there. I was owing the store at Northport; that was an open account; I can't tell exactly how much it was. It was not a couple of thousand dollars, not that much, I don't think. About this time I was not having trouble with the Crescent Lumber Company; never no trouble until the 25th of July. That was the time that the bank sent Mr. Irish up to get a mortgage on everything, tried to keep the Crescent Lumber Company from getting what belonged to them. They came up there and wanted a mortgage on everything in the place, and I really did not suppose the Crescent Lumber Company were doing what they told me they were doing, so I made Mr. Irish agree that the Crescent Lumber Company would not be beat out of their money, that they could take it as long as they held their contract; I have it here; I can show it to the Judge, if he wishes to see it. I was in good financial condition until the Crescent Lumber Company had started the row. Here is the agreement, if you want to read it over, between me and the cashier of the State Bank, that the Crescent Lumber Company shall get their seven dollars a thousand out

(Testimony of James P. Hanley.)

of the lumber. I was shipping and sawing lumber all of the time; I probably had on hand about fourteen hundred thousand; that was what I figured up on the 16th of March. About that. Yes, we cut after that. I was shipping and cutting all of the time after that. That lumber was worth approximately seventeen dollars a thousand, the whole stock, probably twenty. I had shipped the Crescent Lumber Company some lumber through this time, I don't think that they was owed eleven thousand dollars; at that time I was shipping them, whenever they got orders I could fill. At that time I had money that the bank let me have. On the second of May I had no money, only what the bank let me have. As a matter of fact, my account was overdrawn right along; my account was overdrawn as a general thing. When Mr. Olson asked me to do business with the First State Bank of Deer Park I told them I was putting in a new plant, and he told me I could have all the money I wanted.

Q. Answer my question. You never at any time since you started business at the bank, reduced your indebtedness, but constantly increased it?

A. Yes, sir; I was putting in a new plant and had to use the money. The mill and the plant was not about in the same condition on the 2d of May as it was when I filed my petition in bankruptcy; I put in a planing mill after that, if I ain't mistaken.

Q. A year after the 2d of May?

A. No, I had it in before; that is right. The plant was not just the same. I put a boiler in. I put in a five

(Testimony of James P. Hanley.)

hundred horse power; it was not the same. That was the one I bought from the Holland-Horr Mill Company; that is to say, I had a contract with them for that. I did not, about the time this deed was placed on record and the other deed to my daughter also, give a bill of sale of all my horses and personal property up there connected with the mill, to my son John.

Mr. BIRDSEYE: Objected to, unless connected in point of time, not bearing on the transaction, being some two or three months later.

Objection overruled.

Defendant excepts and exception allowed.

Why, I gave a bill of sale of them to Jim here on the advice of the bank's attorney, Mr. Smith, that they brought up there on the 22d. He came up there to get a mortgage on the rest of the stuff. He says, "The Crescent Lumber Company is down in Spokane, and they are putting an attachment on everything, and they will be up here and they will close everything up by Monday," and he says, "You better protect yourself," and I gave the bank's attorney, a Mr. Irish, a mortgage on everything that they wanted, but they did not put that mortgage on record, because they found out afterwards, I suppose, that it would not be legal or something, he advised me to do this. Mr. Smith advised me to give a bill of sale to my son; he told me to put that property in some way so as to pay my creditors some way, in some shape that I could get it to my creditors, that the Crescent Lumber Company would tie up everything Monday.

(Testimony of James P. Hanley.)

Q. And he told you that by giving a bill of sale of your horses and your logging outfit and your paraphernalia around the mill—to your son John, was it not?

A. No, it was Jim.

Q. This same boy?

A. Yes, sir, and he turned it over to Mr. Turner.

Q. That was the way to protect your creditors?

A. That was what he said, and that is what he came up there for, to protect the bank, and I gave a mortgage on anything they asked for.

Q. Did he tell you, also, to make this deed to your daughter for this lot over here in Lidgerwood?

A. That was to protect the man that had paid four hundred dollars on that lot to me.

Q. You mean by the lot, the house and lot?

A. Nothing said—anything about that. He did not advise about that; that was not my property; that was my daughter's. I joined in the deed, probably, but it was to make it more binding. There was a valid consideration paid for the deed. There was a consideration for this bill of sale to my boy; he paid a dollar. I don't know exactly how much the property was worth; I don't think it is worth several thousand dollars; it was worth more than a dollar, probably, I guess. I don't know how many teams it included; it included several, and lumber donkeys, chains and logging outfit and that sort of thing. I gave that to him for the consideration of a dollar, and he paid me the dollar; and there was a dollar consideration paid when I gave the deed to my daughter. She paid that. I don't know who put those instruments

(Testimony of James P. Hanley.)

on record, I am sure. I did not send down to the auditor of Stevens County a bill of sale for the horses and wagons; I think Jim sent that down; I am pretty sure; I had nothing to do with that. I considered after I gave him the bill of sale I was through with it. I think my wife sent the deed to this home property over here to the auditor of this county, or Katy did, my daughter, I ain't sure; I did not have it. This son Jim of mine is twenty-four years old.

Q. And did you ever know where he kept any money prior to this time?

A. No, sir; I don't know where he keeps his money now.

Q. You never heard where he kept this fifteen hundred dollars?

A. I never asked him.

Q. Did you know whether he had any more money than that?

A. I don't know anything about it, whether he did or not. He got this fifteen hundred dollars from his mother. She got it from his grandmother to keep for him until he was of age. His grandmother lived in a house with me; she did not live right with us. She was an old lady past eighty-four years of age when she died; I don't know exactly. She had been supporting herself; when she got so feeble she could not feed herself, when she was near her, my wife used to send her food. She died, I think, I ain't positive, in 1903 or 1904, at Deer Park, 1904 if I am not mistaken. She had—let's see—when she died she probably had four or five thousand

(Testimony of James P. Hanley.)

dollars. I don't know where she kept it. I know she never kept any money in the bank since she was in St. Louis. She did take the money out of the Bremen Savings Bank in North St. Louis, Charlie Krohne was the cashier. She came to this country from Montana more than twenty-three years ago, and she was living with me here in Spokane. She had that money at that time. She did not have all of that money at that time; she had money that she brought from St. Louis with her when she came out here, and she had at that time, when she was living with us in Deer Park, she had the money from the sale of her homestead and money from the sale of her timber. She lived in Spokane with me for just a couple of months, then we located on a homestead I took up one and my mother took up one and we both proved up. She lived in a small shack up there on her homestead. Some of the timber was sold to the Chattaroy Lumber Company. She got her money after the company failed; she attached it. I disremember now how much she got from the Chattaroy Lumber Company, that was a long time ago; she sold the lumber and got her money out of it; I don't know how much; it was more than a hundred dollars; several hundred. I don't remember how much she got for the homestead when she sold it.

Q. As a matter of fact, you sold your homestead and hers, didnt' you, yourself?

A. Yes, sir; parties bought them both.

Q. And you negotiated the sale?

(Testimony of James P. Hanley.)

A. I did; the man came there and negotiated her sale for her; I don't know who the men were; I don't know the man's name; I don't know where he is now; I have never seen him that I know of since; I might. I don't know whether I negotiated the sale of the homesteads to a man by the name of McCrea; I don't know what his name was. I know how much I got for mine; I got twelve hundred dollars for mine, for my one hundred sixty. I don't remember whether my mother got more or less; it might have been about that amount. As a matter of fact, I did not take the money. She had it herself. Mr. Kelly had to go over to the house and sign and acknowledge the deed for her before the money would be paid, acknowledged the deed at the house there. I did not afterwards buy a forty up there nearby these two quarters; you are mistaken there; I did not own a forty there; my wife did, while we still owned this homestead.

Q. You sold the two homesteads and still retained the forty?

A. No, sir. My wife sold the forty before the homestead was sold. I think the building my mother lived in was larger than ten by twelve on that forty; I disremember its size, but it is larger than ten by twelve. She did not live with me at any time. When I moved to Deer Park we lived in the town of Deer Park.

Q. And she lived in a little building that used to be a chicken coop in the back of your house, did she?

A. She and the two boys lived up there; the house was not big enough, it was the only house that was

(Testimony of James P. Hanley.)

vacant at Deer Park at the time. She did not live there for many years before she died; she lived there for just from the spring until the next spring; about a year, probably; I am not positive; it may have been shorter than that. Her and John and Jim lived in the little house and we lived in the other one. She had all of this money with her all of the time. I don't know where she kept it. I never asked her where she kept it. Never had any conversation with her about it whatever, at any time, that I remember of; never saw the money myself. I know she had it from what she had at different times. I saw different amounts, different times; I paid her different amounts myself. I have not any memory of how much I ever paid her; I paid her whatever was got out of her lumber, and then she received her own money for her land. That is all the money she had, but what she brought from St. Louis. That was about twenty-five hundred dollars, that she brought from St. Louis; maybe more than that a little, maybe. I don't know how much more she brought; I know she brought that much. I don't know, as a matter of fact, that she never had to exceed three hundred dollars when she came here; I don't know where you found that out. I know her business better than that. She kept her money buried; all of those years she kept it buried, and kept it buried in St. Louis after she took it out of the bank there. She also sold her property in St. Louis before she came out here; if you wish to know the truth about it and look it up, I will give you a short description of the property, so you can look it up; Forty-three North Second Street, St.

(Testimony of James P. Hanley.)

Louis, but you can look that up if you wish. She came here from Montana; we stopped in Montana. She came from St. Louis to Minneapolis, and from Minneapolis to Trout Creek, and from Trout Creek up here. She lived with me at Trout Creek. She took care of herself; she was able to take care of herself at that time.

CROSS-EXAMINATION.

The WITNESS: I began the erection of my plant at Northport in 1907; I am not positive of the time in the year. At that time I had ten thousand dollars in cash in the two banks in Spokane here, or a little before that, about that time. That was money that I had then accumulated and had on hand, and I had all of this stock and other mill at Deer Park and all of the 1907 cut.

Q. Now, what was the value of your mill at Deer Park at that time?

Mr. LUND: I object to that. I did not go into that.

The COURT: Objection overruled. I will permit him to say what property he had at that time.

Plaintiff excepts and exception allowed.

A. I sold it for three thousand dollars. I also had a stock of lumber at Deer Park; it would be hard to tell the exact value of it at that time. I had, approximately, at Deer Park, between a million and a half and two million feet. It would be worth on the average probably seventeen dollars a thousand at that time. I put the proceeds of the Deer Park mill and Deer Park lumber into the Northport plant. This money that I borrowed from the Deer Park State Bank, or First State Bank of Deer Park, I put that in also, and I bought timber up there

(Testimony of James P. Hanley.)

also, besides. I put everything into the Northport plant and into the business, that I borrowed.

Q. How much altogether?

The COURT: Twenty-seven thousand dollars, I think he said a while ago, was it not?

Mr. LUND: At this date, there was about twenty-seven thousand dollars and interest due.

Q. Was that twenty-seven thousand dollars that you had borrowed of the Deer Park bank, all put into the business of that concern, what more did you put in?

A. Well, I put in the money I got out of this lot on Nevada and Bridge Street there. I sold a lot there for one thousand dollars and put four hundred dollars of that in, that is all I got out of that.

Q. Did you get any more money of the bank that you put into this Northport business than this twenty-seven thousand dollars?

A. I believe they claim I got thirty thousand dollars from them.

Q. And you put that in the business?

A. Yes, sir.

Q. Then into your Northport plant went this ten thousand dollars that you had in cash, this million and a half to two million feet of lumber worth seventeen dollars per thousand?

A. Yes, sir.

Q. And twenty-seven or twenty-eight thousand dollars from the Deer Park State Bank?

A. Yes. And some money from other sources. I

(Testimony of James P. Hanley.)

had that in the plant, approximately that, on the 2d of May, 1910, when the deed was made to Jim.

Mr. LUND: He did not say he put it into his plant; he said he put it into his business.

Mr. BIRDSEYE: What do you mean by putting it into your business? Let's see what became of it.

A. It was all in all the same business; I put it into the lumber and put it into the mill, the most of the machinery and the land, and a good part of the timber, I paid for with this ten thousand dollars myself. Having put that into my business and plant up there, none of it has disappeared; none of it has gone out of the business in any way, that I know of. It was all in the plant and business on the 2d of May, 1910. I have a list of the property here which I had on the 2d of May, 1910—that was on the 2d of May?

Q. On the 2d of May, 1910. I think this deed was dated on that date or the 3d?

A. I have got a list of the stuff here that I had on the 16th of March, and it was about all the same on the 2d of May that it was when I took this memorandum of it. That memorandum was made on the 16th of March, 1910, and this deed to Jim was made on the 2d of May, 1910. Now, I had substantially the same property, the same assets, when I made the deed to Jim, that I did on the 16th of March, 1910. My business had not changed materially during that time. Now, refreshing my recollection, on the 2d of May, 1910, I had a sawmill and machinery, twenty-five thousand dollars.

(Testimony of James P. Hanley.)

The COURT: If you have a list that you desire to put in that way, it is just as well as to read it off; it is quite lengthy.

Mr. BIRDSEYE: Very good. It may go in.

The WITNESS: The statement that I have there, dated March 16, 1910, states with approximate accuracy and correctness the amount and value of the property that I owned and my indebtedness the 2d of May, 1910, because of the lumber I was shipping; I was sawing all of the time, and we were filling up the yard again as we sawed. We had some logs which we were cutting into lumber and were more valuable, and I was selling out the lumber and replacing it in that way; I might have had as much lumber on the 2d of May as on the 16th of March, because we were sawing the timber as long as we went; that was the only thing that would decrease it; still, we were putting it into lumber and it would be worth materially more.

Q. It would be worth more?

A. Yes, sir. That might make a little change in my assets, reduce the value of my assets, I should not think a great deal. The total value of my property on May 2d, 1910, as shown by this statement, is ninety-three thousand, six hundred sixty-three dollars and twenty-five cents. The total amount of my indebtedness at that time was thirty-seven thousand and fifty dollars.

Mr. BIRDSEYE: We will ask to have this marked as an exhibit, so we can identify it, and offer it in evidence.

The COURT: It will be received.

(Testimony of James P. Hanley.)

The paper is marked Defendant's Exhibit "A" and the same is hereto attached and made a part of this bill of exceptions.

At the time this deed was executed by wife and myself to James to the 2d of May, 1910, the condition of my business was prosperous and a good outlook for the sale of lumber. I was operating my plant at that time. I had plenty of logs and all paid for, everything was paid for; I had a million and a half feet of logs on the bank when I filed a petition in bankruptcy. The condition of the lumber market at that time was good. I could market everything of the outcut of the mill; I had a contract with the Schroeder Company of Milwaukee for all of the shop lumber I could cut that year; contract for the year's cut, and the James H. Tevis of Denver wanted a contract for the balance of the common stock and finish lumber. My financial condition at that time, as to pressing debts, nobody was pressing me for payment. I think it was in February that the cashier of the Deer Park State Bank came up and I gave him security for twenty thousand dollars, which had run that far without any security. That security was on ninety days from the 26th day of February, 1910. After the 2d of May, 1910, when this deed was made, I believe the bank loaned me some money.

Q. How much money did they loan you after that time, without security?

A. Well, I gave them security at different times. I would overdraw, and then Mr. Irish would send me a note for to make out to them and I would make it out and

(Testimony of James P. Hanley.)

send it back to them. By security I mean first mortgage. That was all I gave them, was on the twenty thousand dollars. I gave them no mortgage until after the 26th of February, 1910. When they came up in July, when the Crescent Company filed an attachment, then I gave them mortgages on the balance of the stuff they asked me for security on.

Q. As showing whether your credit was good or not, what, if any, money did the bank let you have after the 2d of May free and without further mortgage?

A. They let me have, I suppose, close to ten thousand dollars. I could not tell you at what time after the 2d of May; at different times; at various times along up until the Crescent Lumber Company had filed an attachment on the property in Spokane here. That was about July 22d.

Mr. LUND: July 23d.

The WITNESS: My credit was such, after the 2d of May and then up to the 22d of July of the same year, that the bank let me have, without further security, the sum of ten thousand dollars during that time. The bank first began to press me on my indebtedness along in the spring.

Q. I mean after the 2d of May?

A. After the 2d of May they never pressed me, only they would write to me and tell me I could not draw any money and that the depositors was moving out, the Arcadia Company had bought up several ranches and they were drawing their money out of the bank, and Mr. Irish wrote me at one time particularly, I remem-

(Testimony of James P. Hanley.)

ber, not to draw any large checks or they would not honor them.

Q. When was that? Have you the letter?

A. No. I think it is in Mr. Murphy's office.

Mr. LUND: If available, that is the best evidence.

The COURT: Yes.

Mr. BIRDSEYE: I am not particular about that; I don't think it cuts any figure.

The WITNESS: That was along in May, if I am not mistaken; March or April; April, I think it was. That was before I made this mortgage.

Q. Now, after the giving of the mortgage to the bank for the twenty thousand dollars, on the 26th of February, 1910, and particularly after May 2d of that year, when did the bank begin to press you to pay that money?

A. Well, they started to press me just before the Crescent Lumber Company had filed the attachments; I had shipped them some lumber and the Crescent Lumber Company would not honor the drafts. That was in July some time; it was before the 22d of July; it was probably the tenth or twelfth of July, maybe.

Q. Then, if I understand you, from the time you gave them this security on the 26th of February, 1910, until about the 10th of July, the bank did not press you for payment at all?

A. They did not press me, but they merely said they were short of funds on account of those ranchers moving out, the Arcadia Orchards Company buying the lands up, and the farmers moving out, taking their de-

(Testimony of James P. Hanley.)

posits out of the bank, so I wrote Mr. Irish that I would stop sawing in July and ship out the lumber and get the money for it, so as to relieve the stringency of the bank.

Q. They did not seem worried about what you owed them, did they?

A. No, sir. They were just short themselves.

Q. Now, while we are referring to bank matters, what is the fact about your overdraft at the bank. Mr. Lund asked you if you were not always in overdraft there?

A. They just allowed me to overdraw, for what all of the money I needed to use in the business, and when it would amount to anything, why then they would send me a note, to give my note for it, so as to fix it up with the bank examiner. I had an understanding with them that I might overdraw. The fact about Mr. Moore having paid a portion of the purchase price of those four lots in question—the fact is, I think there was about twenty-six dollars due on it, and at that time they had agreed to fix things up so as to let me start up running again, and they wanted my son to give them a mortgage on those lots for security, they wanted to have the title clear, so as to have me give them a mortgage on the lot to secure their money until they could be paid in lumber. That was, if I am not mistaken, in August, 1910. I ain't positive, at that time, whether Moore paid twenty-six dollars on one of those lots, but I think it was about that. I paid for these lots, I believe, one hundred and twenty-five dollars for one lot, and one hundred and fifty for another, and I am not certain, but I think three

(Testimony of James P. Hanley.)

hundred dollars for one other one, and three hundred twenty-five for another one. I believe I purchased two of them in 1907; I am not positive; the others, I believe, in 1908, I think I purchased one more and in 1910 I may have purchased or agreed to purchase two more, in 1908, I ain't positive.

The COURT: How much did you pay for the four lots?

A. I paid \$125 for one; \$150 for another one, and I believe \$300 for another one; \$325 for the last one. I think I purchased two of them in 1907 and the other two in 1910. I can't remember distinctly. As to the value of those lots at the time they were deeded to my son, May 2d, they were selling probably in there, the same property right around there, for three hundred and twenty-five and four hundred dollars for lots, similar property; McCrea & Merryweather went out and appraised this property for the Crescent Lumber Company before we was to take any action, and they appraised it at four hundred dollars a lot.

Q. The four lots?

A. Yes, sir.

Q. You say your son James paid you fifteen hundred dollars in cash at that time

A. Yes, sir. The circumstances of my selling these lots to James, he wanted to get there before, when we started the retail yard. He was to go in with us there, take a third interest in the yard with me and Joe P. Kelly, and we was to incorporate, so he was busy and could not get down at the time we was to start there,

(Testimony of James P. Hanley.)

and we let it go along a little while until he had time to come down. So then when he got here, Kelly refused to incorporate; he wanted to have it as a company. That was not the first talk that I had with my son James about buying these lots. The first talk, I think, was in 1908. The discussion of it then was, I wanted him to get in there and buy some of the lots and invest his money in property. There was talk about a woodyard later on, not at that time. From that time down, this matter was discussed between me and my son, and he had this money all of the time. My reason for selling these lots, the lumber yard, somebody set fire to that in October; they burned two yards there that night, they burned another yard over about four blocks from us, and I was short of money, this man that was in with me wrote me in here I had to pay eight hundred and some odd dollars to the people he had there, and those different plans fell down, a large amount for lumber and lath and shingles, and everything, and so I knew the matter of insurance I had on it, and I did not get much out of it.

Q. What did you do with the fifteen hundred dollars which James paid you for these four lots?

The COURT: He has answered that as far as he is able.

The WITNESS: I paid to the Northport Trading Company, Mr. Turner's company, his letter says, \$375 in cash.

Mr. BIRDSEYE: I desire to offer this letter in evidence. It is in the nature of a receipt.

(Testimony of James P. Hanley.)

Mr. LUND: It is secondary evidence.

The COURT: This letter from Mr. Turner, I don't think is any evidence that the money was paid; it was written after the money was paid. You can offer this. No court would act on it.

The same was received and marked Defendant's Exhibit "B."

The WITNESS: I paid the Northport Company out of this fifteen hundred dollars, three hundred and seventy-five dollars; I could not tell the date; I can't remember the date. I think that I made a payment very soon after I got the money from Jim. Now that payment was upon indebtedness connected with my business in the Northport business, it was upon my open account there.

Q. What share of that money did you pay on account of your business, or put into your business?

A. I am not sure, Mr. Birdseye, whether I paid any—how much, or any of it, to these different parties. I have paid some cash and checks, and I have given, where I had the money coming due for lumber, I gave orders to them to collect it, so as to make them secure, and get their money probably quicker. I spent the balance of the fifteen hundred dollars in my business and for our living and going around, for transportation, etc. At the time this deed was made on the 2d of May, 1910, to James, I had no reason at all to anticipate insolvency or bankruptcy or financial embarrassment in my business, until the Crescent Lumber Company had filed the attachment, at I did not at that time, I did not

(Testimony of James P. Hanley.)

honestly believe them when they came up and told me they were doing it. I was loading four cars of lumber for the Crescent Lumber Company at the time they levied these attachments on the property in Spokane here. At the time the Crescent Lumber Company attached, on the 22d or 23d of July, 1910, my financial and business condition was really better than on the 2d of May, that year. My assets or liabilities had not materially changed, to any marked degree.

Mr. BIRDSEYE: I desire to offer in evidence a certified copy of the record, the attachment proceedings of Moore and Sherwood as the Crescent Lumber Company, against James P. Hanley and Katherine Hanley, showing the institution of the suit, and the attachment as pending, to show what brought on the crisis in this man's business, on the 22d or 23d of July, 1910.

The COURT: It will be admitted, perhaps, after examination, so as to avoid encumbering the record.

Mr. LUND: I think that, of course, brought it to a focus. I don't know what I would be asked to admit. I would consent that it go in, if Your Honor wishes to receive it.

The COURT: Very well.

Mr. LUND: I think there are a number of things in there that might be of value to the Court. The amount they claim is \$9,284.80 and interest. The attachment was levied on the 23d of July. This is dated the 21st. The suit was instituted in this county, and the writ issued out of this county of Stevens. They attached in this same suit these four lots and the home

(Testimony of James P. Hanley.)

place of Mr. Hanley that has been conveyed, and that we claim has been conveyed in fraud of creditors.

Mr. BIRDSEYE: The record shows that.

Mr. LUND: The deed was placed on record on the 22d, and they attached it on the 23d. This suit is against James P. Hanley and Katherine Hanley, husband and wife.

A. That is my wife and myself.

Q. Now the sheriff's return to this attachment don't show a levy upon any of the mill property in Stevens County?

A. That was levied on by the sheriff of Stevens County.

The COURT: Is this writ directed to the sheriff of Stevens County? There must have been two writs, if it is in different counties.

Mr. BIRDSEYE: I assume there is, but there is nothing on record to show that.

The COURT: Who made the return on that writ?

Mr. BIRDSEYE: The sheriff of Spokane County.

The COURT: He could not levy on property in Stevens County.

Mr. LUND: I can show you my abstract, the abstract of the levy, that was in Stevens County.

Mr. BIRDSEYE: That is shown by this record.

Mr. LUND: This abstract there, is the writ of July 22d, 1910; that is against real estate here.

The COURT: Is there any record of the writ of attachment directed to the sheriff of Stevens County?

Mr. BIRDSEYE: I think not.

(Testimony of James P. Hanley.)

The COURT: The sheriff never made a return?

Mr. BIRDSEYE: Never made a return.

Q. There being no record evidence of the attachment in Stevens County, tell the Court whether any of your property was levied upon in Stevens County by the sheriff of that county, under this attachment?

A. Yes, sir; they levied on everything up there, and put deputies in charge.

Q. Who put them?

Mr. LUND: We will concede a writ of attachment was issued out of this county, directed to the sheriff of Stevens County, and that under that writ he levied on everything that Hanley had up there.

Mr. BIRDSEYE: In Stevens County?

Mr. LUND: In Stevens County, after the 23d or 24th of July; I can get you the exact date.

The COURT: Is the particular date material?

Mr. BIRDSEYE: Only showing it was considerably subsequent to the transfer to the son.

The WITNESS: About the 24th.

The COURT: It was admitted very soon after the deed was made?

Mr. BIRDSEYE: Yes, probably, the 22d or 24th of July, 1910.

The WITNESS: Yes, sir; they sent them up Monday to close up everything, and I think it was on Tuesday I met him at Marcus, coming down on the train. Now that attachment covered all of my and my wife's property in Spokane County and Stevens County both, all of our property. Now, before that attachment, I

(Testimony of James P. Hanley.)

never had any financial difficulty before that. None of my creditors were pressing me before this attachment. My wife and myself were not served with the summons and complaint in that suit, I don't think.

Mr. LUND: Oh, yes.

Mr. BIRDSEYE: That is conceded.

Mr. LUND: They were served with summons.

The WITNESS: I was served with the papers. This attachment of the Crescent Lumber Company shut everything down, and it made creditors suspicious, but there was not any of them pressed me afterwards; we was to start up again, had everything nearly fixed to start up again, and the creditors that I owed at that time has told me since that at any time I wanted to start, anything they had, I could come and get it. This attachment was levied on the 24th of July, or about that time; the bank did nothing to enforce its claim; all they wanted was the mortgage to protect themselves for the balance of the unsecured claim. I was forced into bankruptcy through the agreement with Mr. Lund, wanted us to sign up; he wanted my boys to relinquish all claim to their back pay, and he wanted my son and my wife to give him a blanket mortgage on the property, and he wanted a mortgage on everything; they had no mortgage on the steamboat or on the stock, and he wanted a blanket mortgage on all of that, and before this was fixed up, this was after we had everything fixed up for me to start running again, I went up and sold the mill and got the man's notes for two thousand dollars and turned them into the bank.

(Testimony of James P. Hanley.)

Q. What mill do you mean?

A. Deer Park, and this five or six hundred dollars was coming on this lot over here, that was to be turned into the bank for me to start running on. The Crescent Lumber Company agreed to reduce their debt to seven thousand dollars and to take it in lumber at different times, and to pay for what cars I had shipped them; then this agreement—that agreement did not go through; after he fixed up his agreement for me to sign, he wanted me to pay \$11,400 the first year. I never did enter into that agreement, never signed it up. The beginning of my financial trouble was this suit with the Crescent Lumber Company.

Q. When did you go into bankruptcy?

A. On the 26th of August.

The COURT: That is admitted.

The WITNESS: This property of my wife in Lidgerwood, that has been the homestead of the families for a good while. That was acquired by my wife's money.

The COURT: What is the value of that property? Was that their homestead at the time of the transfer?

Mr. BIRDSEYE: Yes.

Mr. LUND: I don't know that I ought to testify, but the fact of the matter is that they were living at Northport, and transferred this property to their daughter and afterwards she retransferred it and claimed a homestead on it, and moved into it. That will be shown before we get through.

(Testimony of James P. Hanley.)

The WITNESS: I can't tell you the exact value of the homestead of my wife in Lidgerwood at the present time, or at that time, because she bought it seven years ago. This transfer of this Lidgerwood property to my daughter, I think was in July, 1910. The circumstances of that conveyance were, the land was a tax title lot, and she conveyed it to have it conveyed back, to make the title stronger to the property, the tax title lot; only paid \$150 for it. I don't remember how long after it was conveyed to my daughter Katy that it was conveyed back to her mother, my wife. I can't give the Court any idea how long it was; probably a week; maybe two weeks.

Q. Give us the date, your best judgment as to the time it was conveyed to your daughter?

The COURT: If the date is material, you have it there in the record.

Mr. LUND: I have the date, if you want it. The deed is acknowledged July 3, 1910, acknowledged before Sheedy at Northport, as I recollect it.

Mr. BIRDSEYE: Some sixty days after the conveyance to the son.

Mr. LUND: Reconveyed before he filed the petition in bankruptcy, and it was claimed in the petition as exempt. It is not referred to, it is claimed as separate property.

A. There was no financial trouble brewing that I knew of at the time that deed was made to my daughter. It was not in any way made on account of claims of my creditors, or to keep the property away from my cred-

(Testimony of James P. Hanley.)

itors. The purpose of it was to pass it through the hands of a third party on account of it being a tax title, and within two weeks it was conveyed back to my wife. It was claimed as a homestead by her and she and her family lived there. That property has not come into the bankruptcy proceeding at all.

Q. Now, Mr. Lund asked you about a conveyance of certain personal property to your son. When was that bill of sale made?

The COURT: Just prior to the attachment.

A. That was the time that Mr. Smith and Mr. Irish came up to Northport. They were down here, and Mr. Irish told me at that time about getting attachments out. That was a transfer of certain personal property, made by a bill of sale to my son James. He turned it over to Mr. Turner. Turner was one of my creditors. I could not give you the value of that property offhand.

Q. Give us your best judgment; was it more than the claim that Turner held against them?

A. I am not positive; I don't think it did; I don't think it covered the claim.

Q. Then, if I understand you, this chattel property that you conveyed to James and he to Turner, of the Northport Trading Company, was less in value, or not more, at least, than you owed the Trading Company at that time?

A. I believe so; I am not positive. Turner was the manager or officer of that company. I disremember how long Turner held it, but they had it all turned back into the bankruptcy, when I filed a petition in bankruptcy.

(Testimony of James P. Hanley.)

It was all transferred back to me before I filed my petition in bankruptcy. So my creditors were not deprived of any of that; it was all put back in the bankruptcy proceedings. In making that transfer, it was my intention to protect him as a creditor.

Q. Did you have any intention of cheating or defrauding and delaying your creditors?

A. No, sir.

Q. Or putting that by for yourself?

A. No, sir; it was under the advice of Mr. Smith, that came up there, the attorney, that I done it. Mr. Smith came up there, the attorney for the bank, him and Mr. Irish, the cashier. I don't know whether that is Mr. Maurice Smith, attorney, of this city; I don't remember what his first name is. He is a member of the firm of Gallagher, Smith & Mack. My intention in conveying this property to my son James was to protect Mr. Turner in his debt that I owed him.

Q. No, I mean the Spokane property in this suit, these four lots?

The COURT: He testified it was for the purpose of making a sale some time ago.

The WITNESS: In conveying these lots to my son James I had no intention of being in any financial difficulty at that time, and he wanted them for a woodyard, to run a woodyard there in the winter time, as he always had to be idle in the winter time.

Q. You answered Mr. Lund something about valuing the four Spokane lots in this suit at four thousand

(Testimony of James P. Hanley.)

dollars, on account of a railroad running somewhere. What is the fact about that?

A. It was the proposed road coming through; they bought all of the property through Lidgerwood on one street, and there was not anybody knowing where the Burlington road was coming over to join the Great Northern, to come through there, and the supposition was it would come through about where those lots were, to come up in through to Lidgerwood.

The COURT: They sell it for an advanced rate to a railroad company. That is a fact here in Spokane; I can take judicial notice of it, I think.

The WITNESS: This value of four thousand dollars was placed on those lots with reference to that state of affairs. I could not tell you how much my mother received for the sale of her timber on her homestead, approximately, it has been so long ago.

The COURT: He has been interrogated fully as to all of those matters, and has given the best recollection he has on the subject.

The WITNESS: The particular reason my mother had for keeping her money hid away, rather than in a bank, was, when she had her money out of the bank in St. Louis, there was a bank, or there was several banks failed, and people lost their money in them, and she took hers out and had to lose six per cent on that, besides losing the interest she had coming on it. I don't know what my mother sold her St. Louis property for. I don't know the amount of money she took out of the St. Louis bank at that time; she had about twenty-five

(Testimony of James P. Hanley.)

hundred dollars altogether; that is, after selling her property; that is the money she had taken out, and what she sold her property for after she came out here. The special reason my mother had for leaving money to my son James, he had stayed with her since he was three or four years old until she died.

Mr. LUND: This is calling for the opinion of the witness. It is his own idea as to why she did it, if she did leave it.

The COURT: I don't think that is material.

REDIRECT EXAMINATION.

Q. Are you aware of the fact, Mr. Hanley, that your wife signed this agreement with the Crescent Lumber Company, and was liable for that indebtedness?

Mr. BIRDSEYE: I object, unless it appears more definitely what the agreement is.

Mr. LUND: Your Honor will notice this record has a copy of the agreement set up. I wanted to call Your Honor's attention to it.

The COURT: That will be a question of law, rather than for this witness to testify to.

Mr. LUND: That was leading up to another question.

Q. And you and Mrs. Hanley were living at Northport and had been for some time prior to this attachment?

A. Yes, sir.

Q. And that is why you transferred this Lidgerwood property, the old home place as you call it, to your

(Testimony of James P. Hanley.)

daughter, to get it out of your names, because your wife was liable on some of this indebtedness?

A. There was not any attachment at this time.

Q. No, but I say you were anticipating something?

A. No, sir.

Q. And that is why you transferred it?

A. No, sir; I never anticipated anything until the company came up there with their attorney; no doubt you know that.

Q. You transferred it simply for the purpose of helping the tax title?

A. No, sir; you know that well.

Q. Now, in this statement that you made here, Mr. Hanley, you listed property in Lidgerwood that you claimed belonged to your wife, at four thousand dollars—don't you?

A. If it is on the statement, I do, yes, sir.

Q. That was no part of your assets?

A. Well, I probably did not know any different when I put it in there, if that is the case.

Q. And you list these four lots over here at two thousand dollars. Now, as a matter of fact you made a subsequent statement in which you listed those four lots at four thousand dollars to your creditors, didn't you?

A. Listed them to the creditors?

Q. Yes, sir; gave a statement to the bank?

Mr. BIRDSEYE: I object, unless it is shown to be about the time of the execution of this deed.

(Testimony of Katherine Hanley.)

The COURT: I think he testified to that on his direct examination, stated the reason for it.

Mr. LUND: He stated that was the reason he he placed the value on them.

The COURT: I think he admitted he made the statement, also.

Mr. LUND: Perhaps so.

Witness excused.

KATHERINE HANLEY, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

My name is Katherine Hanley. I am the wife of James P., who has just testified. I joined in the execution of this deed to my son James. At the time that I signed it I was in Colville, Washington. I had not had any talk with my son James before that was signed. I knew why it was being made out; I knew the boy wanted to buy lots of his father. I saw some money paid over, it was paid right in the house at Northport. He had the money in his own possession. I could not tell you where he took it from. It might be he took it from his trunk, for I don't know where he took it. I testified before that he got this money from his grandmother; she gave him the money and when he was twenty-one years old, I gave him his money. I got twenty-five hundred dollars from his grandma for the boy. I got it in Northport, after we moved from Deer Park.

Q. When did you get it from his grandma?

A. I got it at Deer Park, just a few days before she died.

Q. How much money did she turn over to you?

(Testimony of Katherine Hanley.)

A. She turned over twenty-five hundred dollars to the boy.

Q. I thought she turned it over to you?

A. She turned it over to me to keep until he was twenty-one years of age. I don't remember how old he was at that time.

The COURT: When did the grandmother die?

A. About six years ago, as near as I can remember it.

Mr. BIRDSEYE: Mr. Hanley testified it was in 1904.

The COURT: Q. How old is your son now?

A. He is going on twenty-four, or twenty-four his last birthday. He was about sixteen years old, or thereabouts, at the time his grandmother died. I kept this money, the grandmother requested it kept. While we lived in Deer Park, I lived right in the office and took my meals in the dining room, and at the mill I had this money right up to the rafters, in the side of the building. It was gold; there was some paper bills. I never kept particular account of it to see how much paper there was, but there was gold and paper.

Q. Where did his grandmother take the money from to give it to you?

A. Well, grandma always kept her money hid away after she came to this country.

Q. Where did she give it to you?

A. She never told me where she kept it hid.

Q. Where did she give it to you?

A. Right in Deer Park, at the mill where we lived, a

(Testimony of Katherine Hanley.)

few days before she died. She died out at the mill. I kept it in the rafters of the office until we moved to Northport. I don't know just how long we lived there; while we were there I had it stored away in the rafters. I disremember whether we lived there a year or two years, until Mr. Hanley moved. We moved to Spokane from Deer Park, from the mill, after she died. I carried this money with me out to Lidgerwood. Out there I kept it in the basement, after it was finished. We lived in the barn, until the house was finished in Lidgerwood. I kept it under the floor, buried in the box, as I told you, buried in a small box.

Q. Did you have any other money besides that?

Mr. BIRDSEYE: I object to the other money.

The COURT: Yes, to test her recollections, for no other purpose.

The WITNESS: I had other money that I kept for her. I disremember how much, but I had probably—I can't tell you exactly how much; I had some money that my grandmother had left to my oldest daughter.

Q. How much?

Mr. BIRDSEYE: I object to this; it takes time.

The COURT: The amount of money she kept there might have some bearing on the property of the boys. Objection overruled.

The WITNESS: Well, I had twenty-two hundred dollars for my daughter, and I had also my own money. I kept it all buried under the floor. When I went to Northport I took this money with me and gave it to my son and daughter. I turned it over to my son and

(Testimony of Katherine Hanley.)

daughter when they became of age. When he was twenty-one years old I handed it to him, in the evening. I took it out of the basement in Northport, where I had it buried, in an old sack that the grandma had left it in. That was in the house up at Northport, in the smaller house. I delivered it to him on his birthday, right in our dining room. I never kept any track of it after that. I hardly know what he did with it; since my husband has lost what he had my boy has kept me and my six little children. I don't know what he did with this twenty-five hundred dollars, outside of what he gave me. He has bought clothes with it; in different ways; he has given his little sisters money. He invested, to my knowledge, fifteen hundred dollars of this in those lots. That is all the investments he ever made that I can remember. I am not positive whether he ever kept a bank account or not. I couldn't tell you how much the boy had in the Northport State Bank.

Q. You know he had a bank account there?

A. Perhaps he did.

Q. You know that, don't you?

A. Perhaps he has got a bank account now, for all I know.

Q. Don't you know that he had a bank account there?

A. I can't tell you how much he had in the bank; he kept a bank account, yes sir. I suppose he kept a bank account during the last year that my husband was in business up there. He never told me that he had that money in the bank, because I never asked the boy.

(Testimony of Katherine Hanley.)

Q. You never asked him a single question about his money from the time you handed it over to him in cash?

A. He has always been with us, right at home, and I never asked the boy. I and Mr. Hanley never inquired into his money matters, no, and what he had done with this money, at any time.

Q. Did you ever inquire into it, to ascertain what your daughter did with the money you turned over to her?

Mr. BIRDSEYE: I object; nothing to do with this. Objection sustained.

Complainant excepts and exception allowed.

Q. You never saw the money or any part of it, after that?

Mr. BIRDSEYE: I object to testimony about her daughter's money.

Mr. LUND: I mean, money that you claimed to have turned over to him.

A. Yes, sir; as I told you, he has kept me since his father has lost everything he had, he has helped to keep me.

Q. You don't know where he got the money for that, do you?

A. It was what money his grandmother had left him, some of it. I know that, because he told me so. That is the only information I have about it. He has not been working all of these years; he has not worked very much since his father lost everything. He always worked while they were working at the mill, but not

(Testimony of Katherine Hanley.)

steady. I don't know whether he drew his pay regularly; I knew nothing about the sawmill business.

CROSS-EXAMINATION.

The WITNESS: I don't know that James did not draw any pay from his father for the last year or so that he worked for him; I know nothing about their mill affairs; that is something I never bothered with. I have heard it discussed between them.

Mr. LUND: Wait a moment; I object.

Objection sustained.

The WITNESS: I say I know James had a bank book at Northport, I know it because I saw his bank books, his checks. I don't know whether that bank book included all the money that he might have; I don't know how much he had at all.

Mr. LUND: I want to ask you, Mr. Birdseye, to have Mr. Hanley produce his bank book and his canceled checks with the Northport State Bank.

Mr. BIRDSEYE: Which one?

Mr. LUND: The young man there.

The WITNESS: With reference to deeding this property to my son James, I signed that deed. The circumstances of the deeding of that property to him on the 2d of May, two years ago, he wanted to start a woodyard with it. I heard the matter talked over between him and his father. I know the price of fifteen hundred dollars was agreed upon for the property. James and his father had been talking about Jim buying that property, I think it had been a year, as near as my knowledge goes; the boy had wanted— These lots

(Testimony of Katherine Hanley.)

were on a spur railroad here in Spokane, in the lumber part of the city. I heard no talk as to why Mr. Hanley wanted to sell the lots to him.

Q. When did you first begin to hear that there was trouble about your husband's business

Mr. LUND: I object, as immaterial. We did not go into it.

The COURT: It is not proper cross-examination. I sustain the objection.

Mr. BIRDSEYE: Q. Do you know what Mr. Hanley's intention was in selling these lots and deeding them to Jim

Mr. LUND: I object to that; it is pretty hard for her to tell it.

The COURT: I will sustain the objection. She has stated what she said and did. She has no other means of ascertaining his intentions, that I know of.

The WITNESS: I could not tell you what my husband did with that fifteen hundred dollars, whether he used it in his business or something else. I said that I kept the money which Jimmie's grandmother entrusted to me for him, until he should become of age, as she told me to. I mean by that, I kept it in a little sack in the box she gave it to me in. She instructed me, when she gave it to me, that the boy was not going to have it until he was of age; that I was to keep it in my possession; that the money was to be buried as she had it. She never told me where she kept her money until she gave it to me. At the time she gave me this money for James she gave me no reason for it; my son was always good

(Testimony of Katherine Hanley.)

to her and had lived with her, and cut her wood, and made her fires and taken care of her. At her death she left as relatives my oldest daughter; she had no relatives living at all. My husband was her son.

REDIRECT EXAMINATION.

The WITNESS: The grandmother left no will and her estate was never probated in this county, or anywhere else.

RECROSS-EXAMINATION.

The WITNESS: She left no real estate, no land; she sold all her real estate before she died. She had no land when she died and all she left was personal property.

Witness excused.

Thereupon a recess was taken until 2 o'clock p. m.

Trial resumed 2 o'clock p. m., January 4, 1911.

Mr. LUND: If Your Honor please, it was agreed between Mr. Birdseye and myself this morning that he would waive proof of the qualification of the trustee. I don't know whether Your Honor heard that or not.

The COURT: Yes, sir.

Mr. LUND: I want to offer in evidence certified copy of this deed from James P. Hanley and wife to James M. Hanley, the defendant, for the purpose of showing the title of record.

The COURT: For the purpose of showing the title, without encumbering the record with the deed, if counsel will stipulate as to the date on which it was recorded, I will take that.

(Testimony of Katherine Hanley.)

Mr. LUND: It is admitted in the pleadings that it was recorded at a particular place, but I find I did not allege the time it was recorded.

Mr. BIRDSEYE: I object to that. I think if we were to be charged with fraud for delay in recording the instrument, we should be advised of that; there is no pleading or any issue in the case in any way on that.

The COURT: It is not necessary that the parties should plead all of the circumstances relating to the deed. They charge the deed was fraudulent. This is merely a circumstance tending to prove that fact, like a great many other circumstances.

Mr. BIRDSEYE: I think if they relied upon delay in recording, they ought to have advised us of that, so we might be prepared to meet it and know what we were to meet.

Objection overruled.

Mr. LUND: Will you stipulate into the record the deed was filed for record——

Mr. BIRDSEYE: Certified copy from the Auditor's office shows that?

Mr. LUND: Yes, sir, certified under the seal of the auditor; filed for record in the office of the Auditor of Spokane County on the 18th day of July, 1910, at 12:50 p. m., at the request of James P. Hanley, and recorded on page 264 of Book "D" of Deeds.

Mr. BIRDSEYE: I will admit the record shows what he has read.

The COURT: Is that the grantor in the deed, or the grantee?

Mr. LUND: That is the father.

(Testimony of O. F. Kelly.)

O. F. KELLY, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

My name is O. F. Kelly. I reside at Deer Park; I have lived in Deer Park about twenty-two years. I am president of the First State Bank and also run a mercantile business there. I became president of the First State Bank in 1909. My father was president before me and started the bank, and I succeeded to his position when he died. Mr. Irish, the cashier of the bank, had charge of the bank. I gave very little attention to the details of the business. I did not learn of the amount of the loan that had been obtained by Mr. Hanley from the bank until at the time the Crescent Lumber Company started their proceedings against Hanley. After learning of the fact and after this attachment was laid, myself and others interested in the bank had several conferences with Mr. Hanley, in reference to his affairs here in Spokane. I think the first conference was in your (Mr. Lund's) office. There was present Mr. Hanley, I believe, and John Hanley and myself, Mr. Olson, and I believe Mr. Danson was there, Mr. Hanley's attorney at that time.

Q. Mr. R. J. Danson, of this city?

A. Yes, sir. I remember Mr. T. B. Moore, of the Crescent Lumber Company, and Mr. B. H. Kizer, his attorney, they were present also. I remember the occasion of a meeting at your (Mr. Lund's) office, along about the 26th or 27th of July of 1910, when the sub-

(Testimony of O. F. Kelly.)

ject of the conveyance of these four lots, the house and lot in Lidgerwood, was mentioned, and the bill of sale that had been given by Mr. Hanley to his son was brought up. The way the matter came up was, if I remember right, we were talking and trying to get a line-up on Mr. Hanley's debts, to see how the thing would work out, if there was any possible way to work it out.

Q. Do you recall my asking him the specific question, Mr. Kelly, in the presence of these gentlemen, as to why he had made these transfers, and whether or not there was any consideration for them?

Mr. BIRDSEYE: Which Hanley, James P.?

Mr. LUND: Yes.

Mr. BIRDSEYE: Unless made in the presence of the defendant here, I object. James P. Hanley is not a party to the record. If he was a party, it might be competent.

The COURT: In an equity case, the Federal Judge sits merely as a commissioner to take the testimony, and he is not supposed to exclude testimony, or to exercise the ordinary function that he does in a law case. For that reason, I will allow your question and overrule the objection.

A. He said he transferred those lots to Jim, or to his son, in order to bring the Crescent Lumber Company to time, if I remember right, there was no consideration at all. He stated that there was no consideration passed from Jim's hands to him for that transfer; that is what he stated up there in the office.

(Testimony of O. F. Kelly.)

Q. I will ask you what, if anything, his attorney, Mr. Danson, said to him when he learned of the fact that he had made these transfers on that occasion?

Mr. BIRDSEYE: I object to that.

The COURT: I will sustain the objection to that.

The WITNESS: I recall having other conferences with Mr. Hanley and his sons, with reference to his affairs, and in an endeavor to adjust the bank's matters and, if possible, permit him to continue the business. Those conferences were, I think, in the latter part of August, if I remember right, we had a meeting, I think it was in Mr. Danson's office.

Q. You mean July, don't you

A. Latter part of July, in Mr. Danson's office, and some talk in regard to what was owing to wages, and one of the boys said——

Mr. BIRDSEYE: I object to what the boy said.

Mr. LUND: In reference to this transfer.

The COURT: It will probably save time, if you will direct his attention more specifically to the statement, Mr. Lund.

The WITNESS: I remember about our arriving at the tentative agreement with Mr. Hanley with reference to settling the claim of the Crescent Lumber Company, and that we met in Mr. Will G. Graves' office, in the Fernwell Building. I remember that Mr. Graves had prepared an agreement, which Mr. Hanley had agreed to sign. I remember that occasion. I remember of Mr. James Hanley, this young man, being present, and J. P. Hanley, his father.

(Testimony of O. F. Kelly.)

Q. And directing Mr. Moore and myself to go down and take up the deed to this lot that was at Broberg & Schuler's office and pay the balance?

A. Yes, I remember that.

Q. Do you recall what the arrangement was that Mr. Hanley had agreed to make in reference to settlement?

Mr. BIRDSEYE: I object, unless it was consummated. If it was simply a matter that was negotiated, not executed or executed.

Mr. LUND: It goes to show the dealings of those parties with reference to this property.

Mr. BIRDSEYE: Furthermore, if it was reduced to writing, that would be the best evidence of it.

The COURT: So far as any written agreement is concerned, of course the document itself would be the best and only competent evidence.

Mr. BIRDSEYE: The agreement was never executed or signed.

Mr. LUND: It was never executed nor signed; I am directing his attention to conversations that led up to it.

The COURT: You may answer.

A. The agreement was, if I remember, that Mr. Hanley was to reduce the indebtedness.

Mr. BIRDSEYE: I object to that; I don't think that is within the scope of the question.

The COURT: Not what the agreement was, because there was no agreeemnt entered into; any of the statemnts which were made by Mr. Hanley would be competent.

(Testimony of O. F. Kelly.)

Mr. LUND: It was only oral, if he agreed to make any reduction in the indebtedness.

Mr. BIRDSEYE: In the presence of the defendant?

Mr. LUND: Yes, sir.

The WITNESS: They were to take up the balance or there was a balance of fifty dollars on those lots, and Mr. Moore went down to the office of Broberg & Schuler, I believe it is, is it not, and paid up the balance on those lots, and Mr. Hanley was to reduce the indebtedness to the Crescent Lumber Company, and I think it was six thousand dollars; I am not sure those were the exact figures; and in turn Hanley was to give them security on the house and lots out here for the balance of the six thousand.

The COURT: In whose behalf did Moore take up the deed?

A. Mr. Hanley's.

Q. What, if anything, was to be done in reference to to crediting on this six thousand dollars the value of certain lumber that had already been shipped and for which they had not accounted, do you recall?

A. If I remember, they were to go up there and go to work. They were to ship so many cars of lumber, and that the Crescent Lumber Company was to pay the First State Bank a thousand dollars, I believe, on the indebtedness; was to deposit a thousand dollars to the credit of Hanley in the First State Bank and apply the balance of those four cars of lumber on this six thousand dollars.

(Testimony of O. F. Kelly.)

Q. This thousand dollars was to be used for what purpose by Mr. Hanley, if that arrangement was carried out?

Mr. BIRDSEYE: I object; it was an unexecuted agreement, merely a discussion; it never went to a meeting of the minds.

The COURT: I will sustain the objection, unless it was something that Mr. Hanley said in regard to this particular property; general negotiations would not be material; I think it is too remote.

Mr. LUND: I am trying to show he was dealing as though he was the owner of this property.

The COURT: You can prove any statement he made as to this particular property, but as to general dealings outside of that, the general dealing is too remote, I think.

The WITNESS: He said he was willing to give a mortgage upon these four lots, James P. Hanley did, to the Crescent Lumber Company.

Q. When did he object, or when did it fall through, if you can state?

Mr. BIRDSEYE: I object, as calling for the conclusion of the witness. If he can state the conversation, the court can draw the conclusion.

The Court: I think that is bringing in elements here that are not material, unless it had something to do with this particular property.

Complainants excepts and exception allowed.

The WITNESS: I remember in these conferences that were had with Mr. Hanley about discussing the value of his property, about his discussing it.

(Testimony of O. F. Kelly.)

Q. What did he say was the value of his property up there?

Mr. BIRDSEYE: I object as indefinite in time, and being very remote from the execution of the deed in question.

Mr. LUND: He has already testified the property was of the same value at the time he made this.

The COURT: Yes, he has testified the property was of the same value, covering all of this period. You may answer.

The WITNESS: As to the value of the property up there?

Q. Yes.

The COURT: This was in July, I understand.

Mr. LUND: Yes, latter part of July.

Objection overruled.

A. He said the mill and land up there, was worth, if I remember right, about twenty thousand dollars, and said if it was to be sold, why, he did not think you could realize over fifteen thousand dollars on it. In reference to his ability to have paid his debts, if he had been forced to pay according to the terms of his obligations, he said he could not pay out. I have lived up about Deer Park for quite a time. I was not personally acquainted with Mrs. Hanley, the mother of J. P. Hanley; I have seen her around there a good many times. I know she lived in a small house back of the residence that the Hanleys lived in, Hanley's folks and himself, a one roomed shack, used for a chicken coop at one time. I never had any con-

(Testimony of O. F. Kelly.)

versation with Hanley at any time in reference to whether or not he was supporting her.

Q. What was the general reputation of Mrs. Julia Hanley, that is, the grandmother, as to being a person of means, if you know, general reputation?

Mr. BIRDSEYE: I object as incompetent and inadmissible.

The COURT: I am inclined to agree with you. He may answer for the reason stated a while ago.

A. Well, from what I always learned of her, she had to depend on Hanley for everything that she got.

Mr. BIRDSEYE: I move that in view of the answer, it be stricken as inadmissible and incompetent, so far as he learned.

The COURT: I will reserve my ruling until the final decision of the case.

CROSS EXAMINATION.

The WITNESS: Yes, I say the old lady lived in what was formerly a chicken coop. It had been improved very little, to render it habitable. As to whether it was a fit habitation for a person to live in, I don't know as I would care to live in it myself. I can't state the size of the building. I have been in the building. It was not plastered. I don't know anything about the old lady being very eccentric and miserly and desiring to live that way. I was rather young at that time, only I have been in the building and was there and have seen the old lady. I never heard from general repute that she was miserly and inclined to live very meagerly and poorly; that was not the general talk. At one of our meetings,

(Testimony of O. F. Kelly.)

and I can't state just the date, in some of these conferences, Mr. Hanley stated that his mill at Northport was worth twenty thousand dollars, but if sold, might not bring that, as I stated. That was after the Crescent Lumber Company had started their proceedings. Yes, it was in an effort on the part of the bank and Mr. Hanley to secure some sort of a compromise with the Crescent Lumber Company, so he could go on and operate the plant. It was not at that time that he said his mill might not sell for twenty thousand dollars, it was attached and that his property was attached. At that time there was a mortgage on the mill. It was close to the latter part of July; I can't state the exact date.

The COURT: You know when the property was attached?

A. That the Crescent Lumber Company levied their attachment?

The COURT: Yes. You said a while ago, it was after these proceedings were commenced that you had a conversation with him. Was not the attachment levied very shortly afterwards, and before this matter was taken up?

A. Very shortly after, but I don't remember the exact date.

Q. Is it not a fact that you were trying to settle with the Crescent Lumber Company because they had attached everything, even the property that your bank had a mortgage on?

A. We tried to come to a settlement, all of us to-

(Testimony of O. F. Kelly.)

gether, the bank and the Crescent Lumber Company and Hanley.

Q. You did not talk settlement until after the Crescent Lumber Company had levied its attachment, did you?

A. They had not levied their attachment yet. I know it, because we talked of it up there in the hotel; we had a meeting one evening; they were getting ready, getting their papers out, and getting ready to do business. I am not quite sure now that they had not levied their attachment when Mr. Hanley stated that he did not know the mill would sell for twenty thousand dollars. I don't think it is a fact that the reason that he said that the occasion of his saying that was because everything was attached and all of his creditors were after him.

Q. When did you first become alarmed about your indebtedness, before or after the attachment of the Crescent Lumber Company?

The COURT: He said he didn't know anything about it until that time.

Q. Is it not a fact that you did not take up any negotiations with Mr. Hanley about securing this agreement or this mortgage, until after you had become alarmed about the attachment of the Crescent Lumber Company?

A. You mean the mortgage on the property at Northport?

Q. Yes.

A. The mill and such as that?

Q. Yes.

(Testimony of O. F. Kelly.)

A. I don't know; Mr. Irish took that up with him. I can't give you the exact date now, the first time when I began to take this matter up with Mr. Hanley. The cause of my starting in at that time to compromise, to settle the matter at that time, was for the simple reason that the Crescent Lumber Company was stepping in, we didn't know what they had coming, and didn't know how things stood, and we wanted to come to a settlement of some kind, to see how we were coming out. I had not been worried about Mr. Hanley's indebtedness before; I did not know of it.

Q. The officers of the company had not become alarmed or worried about it, as far as you know, until the Crescent Lumber Company began to step in, did they?

A. The facts of the case are, they did not know anything about it, about the loan, the size of the loan. You are to understand now that the officers of the bank did not know anything about the size of Mr. Hanley's loan from the bank.

Q. Now let us see if you can answer my question. Is it not a fact that you or the officers of the bank were not particularly concerned about your own indebtedness from Hanley, until the Crescent Lumber Company began to step in with its claim?

The COURT: This witness said he did not know what the indebtedness was prior to that time.

Mr. BIRDSEYE: That may be, but I want to see if he was pressing for it; he probably knew there was a debt of some kind.

(Testimony of O. F. Kelly.)

The COURT: He can answer the question.

A. Why, when the Crescent Lumber Company stepped in there with its claim, and was going to try to tie up things in there, of course we naturally got out to protect our own interests. Up to that time, we didn't know anything about it; did not have any interest to protect. My connection with the bank at that time was as president. I knew that Hanley had an account there. I knew he owed the bank several hundred dollars at that time. I didn't know that he owed the bank several thousand dollars. I did not know that our bank held Mr. Hanley's paper to the amount of something like twenty thousand dollars, approximately, then; didn't know anything about the size of the indebtedness. Yes, I was president of the bank. I told you that I don't remember the exact date I first learned Mr. Hanley was indebted to the bank in a very considerable sum of money. With reference to these conferences, that was in July and August that these meetings were had.

The COURT: Do you contend those conferences took place before the attachment, Mr. Lund?

Mr. LUND: They had a meeting before the attachment, in response to the bank examiner's notification to them about these loans.

Mr. BIRDSEYE: Is that any one of those conferences that you are referring to?

The COURT: That was just a meeting of the officers of the bank, was it?

Mr. LUND: Yes sir.

(Testimony of O. F. Kelly.)

The COURT: The conference at which Mr. Hanley was present took place after the attachment, didn't it?

Mr. LUND: Yes, sir.

Q. The question was, when, with reference to these conferences, did you first learn of Mr. Hanley's large indebtedness to the bank?

A. Which conference do you mean?

Q. That you have been testifying about.

The COURT: The conference at which Mr. Hanley was present.

A. It was after we learned of his indebtedness to the bank, that we had these meetings. When Hanley said the mill was worth twenty thousand dollars, I know he referred to the whole plant up there, and not simply to the sawmill; including all of the lands there, and also including the planing mill, but not including the lumber; it did not include the logs. The proposition was twenty thousand dollars for the real estate and the planing mill and the sawmill. That was made after this attachment, when everything was tied up. He said he didn't know as it would sell for twenty thousand dollars. I think all of Mr. Hanley's creditors were right after him then, as well as the bank. What kept him after them was those proceedings got up, got everybody alarmed that he was owing.

Q. What proceedings do you refer to?

The COURT: An attachment always starts creditors up, and the Court will take judicial notice of some things.

Mr. BIRDSEYE: Very good.

(Testimony of O. F. Kelly.)

The WITNESS: I am positive of the time Hanley said the mill was worth over twenty thousand dollars. I am positive that he said that at that time I referred to. There was present at that meeting Mr. Olson, Mr. Lund, Mr. Hanley and myself. I mean Mr. James P. Hanley, the bankrupt. I think Jimmie Hanley was there, yes. The place was Mr. Lund's office. That was at his old office in the Rookery Building, I think that is the building. I don't remember the exact date when Mr. Hanley said that he could not meet his obligations, if forced to; that was also in Mr. Lund's office. That was during one of those numerous conferences after the attachment. He said at that time he could not meet his obligations, if he he was forced to. It was also in Mr. Lund's office that Mr. James P. Hanley said that he had deeded this lot to his son Jimmie without any consideration and to bring the Crescent Lumber Company to time.

The COURT: Q. Was that at the same conference you testified to a moment ago, when you stated who were present?

A. No, this is a different meeting.

I had several conferences.

The COURT: I thought he had named the parties already. Go ahead and name the parties.

The WITNESS: Mr. Olson, myself, Mr. Hanley, Mr. Lund and Mr. Irish and I don't remember who else.

Q. And you saw him in Mr. Lund's office. Who else was there?

(Testimony of O. F. Kelly.)

A. Mr. Hanley's attorney, Danton.

Q. Who else was there?

A. I think Jim Hanley was present.

Q. You think Jim Hanley was there?

A. Yes, sir. I now testify that on that occasion James P. Hanley, now bankrupt, said that he had transferred this property to his son to bring the Crescent Lumber Company to time and without any consideration whatever. He came to say that because they got him in a corner and got to talking about it, and that is how it happened to come up, they got to talking about his debts. There, with all of our bank people and our lawyers, he said this. We did not have him mesmerized or under any kind of spell to make him talk that way.

Q. How did a man come to talk that way, against his interest, such talk as that, in the enemy's camp?

A. Well, it was of his own free will.

Mr. LUND: I object to that.

Objection sustained.

The WITNESS: I think I have answered the question before as to how this conversation came up. Well, we got to talking about the Crescent Lumber Company, and about their lumber, that they were going to try to get out of him, and he said that he deeded this property over to Jim to bring the Crescent Lumber Company to time. He did not explain how it was going to bring the Crescent Lumber Company to time, that I remember.

Q. Now, this deed to James was on the 2d of May,

(Testimony of O. F. Kelly.)

1910. When was it that Hanley made that statement, how long after that time?

The COURT: He fixed the time as the latter part of July.

The WITNESS: And he said, also, at that time, that James did not pay him anything. I don't know how he happened to make the remark; just the general talk we were talking there.

Q. Now, you say when Mr. Moore took up this deed, and paid this balance—of what?

A. I think it was fifty dollars; I am not quite sure about the amount, but they went down for the purpose of taking out the balance due on the property, on the lots. I am not certain who was present at that time. I would not be positive, I cannot say Jimmie Hanley, this young man, was there.

Q. Now, is not this the fact about that, that it was proposed that the young man, James M. Hanley, the defendant here, should make a mortgage of these lots to somebody, to the Crescent Lumber Company or to the bank; was not that one of the elements of that agreement talked over?

A. That he was to make a mortgage?

Q. Yes, sir, or was he to deed the property to James P. Hanley, his father, and he make a mortgage?

A. I think his father was to make the mortgage on the property. I don't know how he was to get the title to the property. I was not clear. I don't remember now that it was not talked that James M. Hanley, the defendant here, should put the mortgage on those lots.

(Testimony of O. F. Kelly.)

I told the Court, in response to a question from him, that Mr. Moore paid this balance on one of those lots for the elder Hanley. The reason I say that, the reason I state that, was because that was my understanding of it at the time we had the talk up there. I don't remember now at that time whether the title of the property was in Jimmie Hanley, the boy, and we didn't all understand it so. I said I was not certain whether the money Mr. Moore paid was in Jimmie's name or J. P.'s name, the old gentleman; the old gentleman was to give a mortgage on these lots.

Q. How was he to give a mortgage unless he had title to it?

The COURT: I don't attribute any importance to that fact. I wanted to know whether he represented the Hanleys or the bank.

The WITNESS: This agreement never went through. That agreement contemplated a mortgage upon the homestead and all of the property, the relinquishments of the liens of the Hanley boys; I am not clear whether a mortgage from Jim Hanley on these lots was also in the agreement; I don't remember.

REDIRECT EXAMINATION.

Q. To refresh your recollections, about the time when you learned of this large indebtedness of Hanley's to the bank, did not the bank examiner come along there, about the middle of July, or thereabouts, just before this attachment was levied?

A. It was some time in July, I know, that he came along, give us a jogging up and called our attention to

(Testimony of Louis Olson.)

it, I don't remember when. That was the first time I learned of the indebtedness. Mr. Irish immediately called Mr. Hanley down from Northport and had a conference with him at Deer Park.

Q. And as a matter of fact, just as soon as——

Mr. BIRDSEYE: I object, as leading. He can ask him to state what was done at that time.

The COURT: The objection is sustained as leading.

The WITNESS: When I learned of the amount of the indebtedness of Hanley to the bank, I became exercised over it. I did not consider him good for it. That is true of the other directors of the bank, who did not pay any attention to their duties.

Mr. BIRDSEYE: I object to his speaking for the other directors.

The COURT: The other directors are of no avail here. I sustain the objection.

Witness excused.

LOUIS OLSON, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is Louis Olson. I reside at Deer Park, right in town; I have lived there about a year and a half; I lived in the country twenty-three years, twenty-four next spring. I was one of the directors of the State Bank of Deer Park; I was in until this thing happened, from the time that it was organized, after Pete Kelly died, I was president of it and filled his term out, and after the new year Mr. Kelly got elected president and I was vice-president. As a di-

(Testimony of Louis Olson.)

rector of the bank, I did not know of this indebtedness of Hanley at the start, but it was some time in February that there was something kind of came up, and it was one evening in the store that Will Irish came to the store and asked me if I——

Mr. BIRDSEYE: I object as hearsay.

Q. I just wanted to get the time. What did you do in reference to the matter?

A. When I found it out, I told Will the best thing for him to do, that is, Irish——

Mr. BIRDSEYE: I object. He can state what was done.

The WITNESS: I told Irish to go and see what he had up there, that was the idea, as security.

Q. Now, later, did the bank examiner come along there?

A. That was along the first part of the summer. He told—Will Irish was not there at the time when the bank examiner was there, the first time, but he told Mr. Berg and also my bookkeeper, who was in the store, to tell Will Irish——

Mr. BIRDSEYE: I object, as hearsay.

The WITNESS: Coming down to the time when I and Mr. Kelly had a meeting with Mr. Hanley, I remember it was in your (Mr. Lund's) office, some time in July, probably the 25th or something like that, I could not remember the date; it was along there. I can state all that I know were present. I was there, Mr. Kelly and you (Mr. Lund) and Mr. Irish, Mr. Moore was there also, Mr. Hanley, old man Hanley, and I

(Testimony of Louis Olson.)

think his—I can't remember that I saw Jim there at any time.

Q. What, if anything, did J. P. Hanley acknowledge about why he made these deeds to his children?

Mr. BIRDSEYE: I object, unless in the presence of the defendant. James P. Hanley is not a party to this record.

The COURT: I will make the same ruling that I did awhile ago; confine it to this particular property.

Mr. LUND: Yes, to those four lots.

The WITNESS: He said he done it to get the Crescent Lumber Company to come to terms. I don't remember what, if anything, he said about any money having been paid for the transfers; I could not remember it; I don't remember what he said. Mr. Hanley said the mill and the ground was worth twenty thousand dollars. He did not say it could be sold for that; he said he didn't know, probably for not more than fifteen thousand dollars. He said he did not think he could pay up all of the creditors in full; that was figured out right there, that he could not.

Q. That is, he figured out the value of the property and the amount of his debts?

A. We all were figuring on it; of course, we did, the way we were figuring out, it was something like thirty-five or thirty-six thousand dollars and he figured also what he had would only amount to forty thousand and his properties would come only to about thirty-six thousand dollars, according to his own figures. I attended one more meeting, and that is about all I did

(Testimony of Louis Olson.)

attend. That was at the meeting at Danson's office. I don't think that was the next day; I think that was another time that we came down. It must have been later on that something was said with reference to the deeds, because I was not here. I was not present in Mr. Will Graves' office at the time. All that I heard about that deed, was after they came back home, Mr. Kelly and Will Irish.

CROSS-EXAMINATION.

The WITNESS: These conferences where this talk was had, was after the Crescent Lumber Company attached Hanley's property. I don't know whether that was the same time that he said he could not pay his debts, could not pay out or not; probably I was here three times; I think we was twice in your (Mr. Birdseye's) office. Whatever he did say, that was after the attachment of the Crescent Lumber Company. I say we were all figuring up the value of his property. I don't know who put the figures on the property; he gave the value, I think, himself, and they were set down. He gave twenty thousand dollars for the value of the mill and the land. I don't know how they figured for the value of the lumber; I think he said something about fourteen hundred thousand feet of lumber; I don't know how much per thousand; I don't know how that figured out; somebody got a better head than I to figure it. I don't know anything about whether he reported having one million seven hundred thousand feet of lumber.

The COURT: One million four hundred thousand is what he testified to himself.

(Testimony of Louis Olson.)

The WITNESS: One million four hundred thousand is what he said. I heard today, I did not hear at that time, that he reported it as of a value of seventeen to twenty dollars a thousand.

Q. What value did he put on it that time?

A. He could not have sold the lumber at that time at that price; you know it and I know it; he could not sell it at all when it was attached. I can't remember figuring up the value of the property, what value was put on the one million four hundred thousand feet of lumber; we figured in round figures. When I say it made the value of the property figure up to thirty-five or thirty-six thousand dollars, I think the one million four hundred thousand feet of lumber was included in that; I think everything there was included, but I don't know the price per thousand. I don't know how they figured it; all that I knew was that they figured it out, that is all I have got to go by. I don't think his sawlogs on the other side of the Columbia River were figured in there. Yes, they were figured in, of course they were, but I don't think they were figured in in the twenty thousand dollars for the mill, that is what I mean. I can't remember how many sawlogs he reported over there; it seems to me like I heard something like one million and a half; I think it was something like five dollars valuation that he put on those sawlogs.

Q. And you figured this all in together and made it about thirty-six thousand dollars?

A. I don't know that these were his figures.

Q. What did you make his debts?

(Testimony of Louis Olson.)

A. About forty thousand dollars.

Q. You made the debts a little more than his property?

A. Yes, and I think he was owing it, too. I could not say whether it was at the first or second one of these meetings that Mr. Hanley said he had conveyed the property to his son James to bring the Crescent Lumber Company to time, but I am pretty sure he said that; it is pretty hard to remember a year and a half back. There was present the same men as I said a little while ago, that is, me and Mr. Carey and Mr. Lund and Mr. Kizer, Mr. Hanley, Mr. Moore, and I think there was probably one more and Hanley's lawyer at that time.

Q. Mr. Kizer, Mr. Moore's lawyer?

A. Yes, he was there. The meeting of the officers of the bank, also the Crescent Lumber Company and their lawyer and Hanley, and the bank's lawyer; I think Lund the first time was supposed to be Hanley's lawyer, if I ain't mistaken; Mr. Lund was representing Mr. Hanley at those conferences, that is what I think; a fellow by the name of Smith represented the bank at one time that we had here, but he was not here at that time. Smith was not there.

Q. Your idea is that Mr. Lund was representing Mr. Hanley at that conference?

A. In one way, we thought if he had settled things, it would have been better for all; that is what we came there to have those meetings for. It was under those circumstances that Mr. Hanley said he had deeded this land to them, just to make the Crescent Lumber Com-

(Testimony of Louis Olson.)

pany to come to terms. He did not explain how that was going to bring the Crescent Lumber Company to terms, not that I remember.

Q. Now, Mr. Olson, that deed to James Hanley was on the 2d of May, and this conversation was after the attachment of the Crescent Lumber Company, the latter part of July. Now, did he explain to you, or give any reasons how that would bring them to time?

A. Not that I remember, and I don't thing that he did. There was something said that the Crescent Lumber Company went back on them, and not wanting to take the lumber when he wanted to ship it; I remember that; I said I could not remember, in answer to Mr. Lund, whether Mr. Hanley said at that time that his son James did not pay him any money for the lots. It was, it must be somewhere the middle of February that I told Will Irish to go up and see what Hanley had up there. He came back well satisfied in one way, he thought he was.

Q. How is that?

A. I don't know; I could not say for sure; of course, he talked sometimes he talked like he was satisfied and another time he did not. I didn't know anything about a mortgage being taken from Hanley on the 26th of February, at the time this was taken, because I had nothing to do with the bank at the time; in one way I had, but Will Irish had charge of the whole bank. My connection with the bank on the 26th of February, 1910, down to the 24th of July of the same year, was vice-president, and, of course, I was a director. Sometimes

(Testimony of Louis Olson.)

when I had any money to deposit I would go to the bank every day, and if I did not, I did not go there. There was some meetings of the directors probably held when I was not there; we did not hold the meetings so very often; probably twice a year, I guess. I could not say how much money our bank let Hanley have, without security, after the 2d of May, 1910, because I did not pay any attention to it, because it was left to Will Irish, whatever he should do.

Q. Is it not a fact that after Will Irish went up there, in February, 1910, and came back, that after that, after the 2d of May, 1910, your bank let Hanley have over ten thousand dollars without any further security?

Mr. LUND: This witness says he don't know about that.

Mr. BIRDSEYE: He may be able to remember that, something about that; he was a director and vice-president.

The WITNESS: I know he got money after that, of course. I don't know that he got up to ten thousand dollars, but I know he got two thousand dollars after the bank examiner was there the first time.

Q. Now, if you thought Hanley was in such bad shape financially, how was it he kept getting money at the bank without security?

A. I got security when I found it out. I first got security when I found out how the circumstances was. That was when we found out the Crescent Lumber Company had attached his property here, so I got hold of the whole thing.

(Testimony of Lawrence C. Owen.)

Q. That was the first time you got security, was after the Crescent Lumber Company attached his property?

A. I don't know how the thing was. I mean to say as a director and vice-president of the bank, I did not attend to business because the thing was left, I told you, to the——

The COURT: It is very evident they did not attend to business or this loan never would have been made.

The WITNESS: You bet your life it would not.

Witness excused.

LAWRENCE C. OWEN, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is Lawrence C. Owen. I reside at Dennison; that is three miles south of Deer Park. I have resided there, as near as I can recollect, it will be twenty-six years last fall. I knew James P. Hanley and his mother, and wife, and his children. They lived, in reference to my place, on their homestead; they lived north and west. I should judge about three miles. I was intimately and well acquainted with them. I knew Mrs. Julia Hanley, the mother of J. P.

Q. How did she live in that neighborhood?

The COURT: I think it is admitted she did not live in luxury, unless you want to prove something specific.

Mr. LUND: I will get to it.

The WITNESS: She lived alone on her homestead, in a little place, and then when they moved from there, she lived alone on a forty acres north of father's place.

(Testimony of Lawrence C. Owen.)

I never had any talk with Mrs. Hanley about financial affairs, only just once when she came to school; she came to school and said that——

Mr. BIRDSEYE: I object as hearsay.

The COURT: I think it is rather remote, but he can answer.

Mr. BIRDSEYE: Objected to as irrelevant, incompetent and immaterial, and hearsay, and inadmissible. I can't understand how what was said to this man would be competent.

The COURT: It might be competent hereafter. He may answer the question.

The WITNESS: She came to the schoolhouse and said she was driven out of home and had no money, nor nothing to live on. There was nothing further happened, that I know of. She went back and the teacher told her she would see what could be done, and she went home.

Q. Did the school children gather up the remainder of their lunches and give to her?

Mr. BIRDSEYE: Objected to. He has asked the witness what was done. Objected to as leading.

Objection sustained.

Complainant excepts and exception allowed.

The WITNESS: The children wanted to donate what they had.

Mr. Birdseye: I object, the question is what they did.

The WITNESS: I know what homestead she took up. It is hard to say what it was worth. As to what land was selling for in that locality at that time, there

(Testimony of Lawrence C. Owen.)

was one place adjoining it, the southeast one hundred and sixty, on the same section, my father offered me that soon after that for——

Mr. BIRDSEYE: I object, no proof of value, any offer made. He has got to show himself competent to state the value.

Objection sustained.

Complainant excepts and exception allowed.

Q. I ask you if you know what the value of it was?

A. This place adjoining sold for one hundred dollars. There was no land ever cleared on her place known as her homestead. I have not been there in the last three or four years and don't know whether any land has ever been cleared on it up to this time.

Q. Any other time, did you have any conversation with Mrs. Hanley as to whether or not she had any money?

A. I took her some beef once, my father killed a beef, and took some beef up and she said she could not——

Mr. BIRDSEYE: I object as hearsay. Same objection.

Objection overruled.

A (Continued). And she told me that she could not pay for it, that she had no money, and I would have to get the money of Mr. Hanley. That is, her son. I was around Mr. Hanley's mill for a time, I worked for him awhile. His mother was living in the same place, north of my place, at the time I worked for him, in a little place by herself.

(Testimony of Lawrence C. Owen.)

Q. What was her general reputation in the community, as to whether or not she was a person of means, or had any means at all?

Mr. BIRDSEYE: I object, calling for irrelevant, incompetent and immaterial testimony.

The COURT: If she had her money in tin cans, she would not be likely to have any reputation for having wealth. You may answer the question, however.

The WITNESS: It was talked that she had nothing.

Q. Who was supporting her?

Mr. BIRDSEYE: Same objection.

The COURT: You can answer, if you know.

The WITNESS: I don't know; that is, I don't know of my own knowledge; just general talk.

CROSS-EXAMINATION.

The WITNESS: This Grandma Hanley was a kind of a jolly woman, very talkative. She might have been childish and peculiar at times, not to my knowledge, though.

Q. Wasn't she kind of an old-fashioned soul, lived by herself and did not have much to do with anybody?

A. Yes, sir; she lived by herself. I don't know as I could say whether she was peculiar, any different than the common run of old people; she was an old lady. She must have been about seventy years old when she came to the schoolhouse. I was going to school. I was about sixteen or eighteen. That has been about fifteen years ago, I guess.

Q. Fifteen years ago, you remember pretty distinct now?

(Testimony of Lawrence C. Owen.)

A. I remember her getting the money, yes sir.

Q. Wasn't she what we call an eccentric old lady, a peculiar old lady, that was doing things of that kind?

A. I did not see her do any, only this one time, to my knowledge.

Q. Didn't she have the reputation up in that community of being a cranky, peculiar old lady, quarrelsome, living by herself?

A. She never visited much.

Q. Answer my question. Didn't she have that reputation among the neighbors?

A. I could not say, because——

Q. Didn't you ever hear such talk about her

A. No, not to my knowledge.

Q. She was just like any old lady, was she?

A. Yes, just like any old lady.

It was some time in the fall of the year, but I forget when, that I sold her the beef; I could not state what year, how long ago.

The Court: Aobut how many years ago?

A. It was after the time that she came to the school-house, some time ago. I was sixteen years old, somewhere. It was not in the last few years, fifteen or sixteen years ago. I forget just what beef I sold her, I could pack it easily. I am distinct that she told me she had no money. She told me to get it off her son Jim. She just said she had no money and could not pay her, and her son Jim would pay it. There has not been any trouble between I and the Hanleys, any of them; my father and the Hanleys have had some difficulties.

(Testimony of J. F. DeWitt.)

Q. Which one of them was it that shot his cow, you or your father?

A. I don't know that either. I don't think he ever accused either one of shooting the cow. There was no trouble of that nature, not in regard to the cow. There has been standing trouble between my father and the elder Hanley over land. He told him to get off the place or he would put him off, I believe, or something like that, my father did. My father didn't have no gun to put him off with.

Q. Your father has killed one man in that neighborhood, hasn't he?

Mr. LUND: I think that is improper.

Objection sustained.

The WITNESS: It is not a fact that I feel very unfriendly and very bitter by reason of this family feud with the Hanleys. I had dealings with Mr. Hanley afterwards and I paid him back.

Q. He overpaid you?

A. Yes, sir, by mistake.

The WITNESS: I happened to come in here as a witness, because I was summoned here by Mr. Kelly. Other people had told Mr. Kelly that I knew something about this case against Mr. Hanley. I did not go to him and tell him something about it; he 'phoned to me yesterday and told me to be here.

Witness excused.

J. F. DeWITT, sworn on behalf of complainant, testified:

(Testimony of J. F. DeWitt.)

DIRECT EXAMINATION.

The WITNESS: My name is James F. DeWitt. I am acquainted with J. P. Hanley and his family. I was acquainted with his mother. I became acquainted with her, I think it was about twenty-three years ago last spring, if I remember right. The first time I recollect of seeing her was the one time she got on the train, I think at Trout Creek, Montana, we were coming through there. I met Mrs. Hanley on the train when I was coming to this country. I became acquainted with her son and his family afterwards, after I came here. I was well and intimately acquainted with them later on. Well, in the first place, we settled down on the north side of the river over here, and if I recollect right, Mr Hanley was not living near there at that time. Mrs. Hanley was living, I think, with Jim Hanley, living with her son. I think they lived here from—I think she lived here from April, I think it was, up until some time in the summer, and they moved onto this homestead late in the fall. Mr. Emmett Pratt and myself helped her locate on the homestead. I did have a conversation with Mr. Hanley's mother about her financial affairs, or whether she had money, once; I did twice. To the best of my knowledge, it was several years after they moved onto their homestead; she came over to our place and said that she——

Mr. BIRDSEYE: We object to what she said, as being hearsay and incompetent.

Objection overruled.

(Testimony of J. F. DeWitt.)

The WITNESS: She said she had some money left, if I recollect right, it was either three or four hundred dollars, or something like that, she told me at that time.

Q. What did she say, if anything, about being on good terms with Mr. Hanley's wife?

Mr. BIRDSEYE: We object to that. It would be in no way competent.

The COURT: It seems to be very remote.

Mr. LUND: It might go to the probability of her turning over a lot of money to her.

Q. When did you have any other conversation with her about money matters?

Mr. BIRDSEYE: I presume there is no use of my making further objection

The COURT: No.

Mr. BIRDSEYE: I want my objection to go to all of this class of testimony.

The COURT: Very well. Objection overruled.

The WITNESS: There was several times she came over there to our place and made several little complaints about the way she was used. Subsequent to the occasion when she said she had three or four hundred dollars, later on she had some little trouble, I think, with Mrs. Hanley, she came over to our place and said that she was destitute and she had no money and was depending on Jim for her living. That was just before they proved up. I think that must have been, oh, it was some four or five years, or such a matter, they had moved onto that claim. Before the timber was cut off, land in that locality, it was considered it was worth

(Testimony of J. F. DeWitt.)

more money than it was afterwards. We thought land was chiefly valuable for the timber at that time. This particular piece of land that Mrs. Hanley owned, I think there was a small piece cultivated on one corner. I didn't know exactly where the line ran, but I think there was a little on one corner of their place cleared, not what I would say cleared, but there was some slashing, some improvements made, a little house built.

Q. Did you ever hear anything about having sold the timber to the Chattaroy Lumber Company, and that company having failed, and not getting anything out of it?

Mr. BIRDSEYE: I object, as hearsay.

The COURT: I think this is hearsay of the rankest kind. I don't think it is competent for any purpose. If you desire to get it in the record, I will permit it to go in.

Mr. LUND: I don't think it is important enough to go in, if they have any objection.

CROSS-EXAMINATION.

The WITNESS: It was several years after Grandmother Hanley moved onto her claim that she told me she had some three or four hundred dollars, but it was before she had sold her claim.

Q. Did she tell you that was all the money she had?

A. She said she had three or four hundred dollars left, something like that.

Q. She did not tell you but what she had some little left?

A. Yes, sir; that is what she had left.

(Testimony of J. F. DeWitt.)

The COURT: Q. When did she move on this homestead claim?

A. I think it was twenty-three years ago last fall that she made actual settlement. I don't know how Grandma Hanley came to tell me that, of course she was old and somewhat childish and she seemed to put lots of confidence in us in a way, and her being old of course we——

Q. She was so old and childish that she seemed to have lots of confidence in you, you have said?

A. I say she was old and childish, the same as any person. I don't know how old she was then; I can't remember; she must have been seventy, I judge, or close to that. She told me that her money was exhausted after she went on the homestead, later on, I think it was some time before she proved up. I don't know how she came to tell me that her money was exhausted; she just volunteered that statement.

Q. She was an eccentric old lady, wasn't she?

A. Why, she was a smart old lady. I never see anything very peculiar about her, any more than any other person. As to living by herself and not having very much to do with other people, of course she had to live on her homestead. She didn't associate a great deal with other people, not a great deal. I think she did keep her affairs pretty much to herself. I don't think she was inclined to be miserly. I could not say she was inclined to live in a niggardly, scrumpy fashion; I think she believed in living comfortably, but she was not extravagant, and she was saving.

(Testimony of J. F. DeWitt.)

Q. Were you sufficiently intimate or friendly with her that she would tell you how much money she had and when it was drawn?

A. She was friendly to all of the ranchers, as far as I know.

Q. Answer my question, as far as you can.

A. Friendly to us, that is all I can say. Yes, I have several times gone around and told the neighbors how much money I had and when it was exhausted; several times, a good many times. She was not asking to get money when she told me her funds were exhausted. I don't remember just the circumstances of how she came to make a statement. It was on my homestead, on section eight. I don't know what led up to it, how she happened to talk about it. She did not come along on the street and say, "Mr. DeWitt, my money is all gone"; she was there, she came over there and made a little visit, and in the conversation she mentioned it to us; we did not ask her any questions, I know I did not; she just voluntarily said that. Whether she said it through sympathy or what, I don't know, but I know she said it.

Q. Did she tell you how her money had gone? Answer the question yes or no.

A. Yes, sir, she did; she said she had.

Q. Wait a minute, now. I ask you that. When did she tell you how it had gone?

A. Well, the time——

Q. Who was present when she talked that way?

A. My wife.

Mr. LUND: One question at a time.

(Testimony of J. F. DeWitt.)

A. My wife was present. I don't just remember how long I saw Grandmother Hanley before her death, the last time I saw her. I was gone from that part of the country four or five years; I think I was gone about, oh, I guess about four years. I guess it is a fact I did not see her for the last six or eight years before her death, it has been all of that.

REDIRECT EXAMINATION.

The WITNESS: She said she had used the money for her own purposes and that she had given Jim some money, Jim Hanley, her son. That was in the same conversation that she told me that her money had gone, at the same time, the same place. That was stated to me and my wife, and it was in a casual conversation. She brought it up herself.

RECROSS-EXAMINATION.

Q. Is it not a fact that shortly after Mrs. Hanley went onto her homestead, you brought her some groceries from Chattaroy and charged her five dollars for a few groceries, and after that she never had but little use for you or your family after that?

A. I charged her five dollars, you say, for bringing some groceries from Chattaroy?

Q. Yes, did you?

A. I don't think I ever charged her a cent for anything I ever done in my life. I don't remember having a falling out with the old lady over a circumstance or anything of that kind. She always treated me very friendly whenever we met.

Witness excused.

(Testimony of J. M. Beard.)

J. M. BEARD, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is J. M. Beard. I reside in Deer Park. I have lived there about close to nineteen years. I knew Mrs. Hanley, the mother of J. P. Hanley, in her lifetime. I lived right close to them, adjoining, next door. I knew Mrs. Julia Hanley, that is, the grandmother, intimately and well while she lived there in Deer Park, yes sir. We visited very frequently, that is, I had a garden right at the house, the little house she lived in, where I was working, and she was very talkative, and in that way she did not leave her house very much.

Q. What sort of a place did she live in, how was it fixed up?

The COURT: It is admitted it was a sort of half house, with roof broken out, I don't know whether it is necessary to go into that any further.

The WITNESS: I didn't have any conversation with Mrs. Hanley, whether or not she had any money in particular. She never made any statement to me about having disposed of or lost all of her money, the only remark in regard to her financial affairs was about her timber; she said that she had sold it and let her son Jim have the timber off of her place. She turned over to him the timber on the place. She never made any remark at all, not to me direct, about having any money.

Q. Was she reputed to be a person of means in the community there?

(Testimony of F. M. Berg.)

Mr. BIRDSEYE: I object as incompetent and inadmissible.

The COURT: Same ruling.

The WITNESS: No, she was not. I don't know as I could tell who was supporting her, exactly. Mr. Hanley took the provisions over to her, Mr. Hanley's little girl. I never had any talk with J. P. Hanley here, in which he made any statement as to whether or not he was supporting his mother; never did.

CROSS-EXAMINATION.

The WITNESS: Yes, the old lady told me she let her son James have her timber. She did not say anything about what he paid her for it, or whether he paid her anything. I worked for James P. Hanley at the time the old lady sold logs off her place to the Chattaroy Lumber Company, but I didn't know his mother at that time. I didn't know that circumstance.

Witness excused.

F. M. BERG, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is F. M. Berg; I work at the First State Bank, assistant cashier. I have been assistant cashier there just about a year. I was employed at the bank prior to that time, in a clerical capacity, practically the same position. I had charge of the books of the bank. I kept the accounts of depositors in this ledger. This is the ledger in which we kept Hanley's account. We had what we called the "active" and "inactive" accounts, and the more active

(Testimony of F. M. Berg.)

or business accounts we kept in this book. J. P. Hanley opened his account with the bank on the 15th of July, 1907, before I came there. His indebtedness to the bank on the 2d of May, or thereabouts, was a few dollars over twenty-seven thousand.

The COURT: The 2d of May, 1910?

The WITNESS: The 2d of May, 1910. I don't remember any time when Mr. Hanley ever deposited any cash in the bank to his credit at any time, and I am sure there was no such amount as fifteen hundred dollars or thereabouts.

Q. What do your records show there of the deposit, the nearest date to the 2d of May, subsequent to the 2d of May, 1910?

A. On May 7th there was a deposit of——

The COURT: He don't claim to have deposited any prior to that fifteen hundred dollars, does he?

Mr. LUND: No.

The WITNESS (Continuing): A deposit of \$324 on May 7th, 1910, and on the 2d there was two of a little over a hundred dollars each.

Q. What is the fact as to whether Hanley's paper was due or past due at that time?

Mr. BIRDSEYE: Objected to as calling for a conclusion; the paper will speak for itself.

The COURT: Yes. Some one testified that a ninety day note was given in February; this being a bank officer, I suppose he can get the totals of them. The note itself will be the best evidence, if there is any dispute. Does the record show the nature of the transaction?

(Testimony of F. M. Berg.)

The WITNESS: No, but I happen to know just exactly what they were.

Mr. BIRDSEYE: I think I will object.

The COURT: He may answer.

The WITNESS: All due, except four thousand dollars, on April 23d note for ninety days, and all of the balance was due at that time, May 2d; part of it was an overdraft for about six hundred dollars. The status of his account in reference to being overdrawn in 1910, the method was usually when he wanted money, he drew and when it amounted to fifteen hundred dollars, to two thousand dollars, or something like that, he would give his note to cover it usually. He never reduced his indebtedness, not that I know of; he made deposits, of course, but he never reduced his notes. He never paid anything on his notes, on his loan, that I know of.

Q. What is the fact about his indebtedness increasing, his loans increasing?

The COURT: He admitted that himself.

Mr. BIRDSEYE: Said that was his arrangement with the bank.

The WITNESS: Mr. Irish had charge of the bank at this time; that is, specially the loans, that part of it. The bank then had as security a mortgage on the sawmill for this indebtedness, on May 2d we had a mortgage on the sawmill and land for two thousand, and logs for eight thousand, and machinery for ten thousand; making twenty thousand dollars. The balance

(Testimony of F. M. Berg.)

was unsecured. Now, subsequent to the 2d of May he made a note to the bank, it was some time in July, I believe. That note was given to cover his overdrafts. It was at time, when the checks came in on that day, a little over three thousand dollars, and that is what he gave the note to cover that. That is, he had already drawn the money and he gave his note to cover it. That was the last loan that was made, the last and only loan since that date.

CROSS-EXAMINATION.

The WITNESS: Mr. Hanley deposited nothing in our bank on May 3d. The first deposit I gave was the 2d of May. There were two amounts, one for \$117.75, and one for \$164.99. The aggregate of the two is two hundred eighty-two dollars and a few cents. Then, on the 2d of May, 1910, he deposited two hundred eighty-two dollars and a few cents, if I am not mistaken. The next deposit in May is May 7th, \$324.26. Next, on May 12th, \$902.65; next May 14th, \$465.70. He was making deposits right along then. Mr. Hanley received from our bank, or money went to the credit of his account in our bank, after the 2d of May, up to the 24th of July, 1910, of practically three thousand dollars, just about that, a few dollars more or less, possibly. That is all that our bank owed him for between those dates, three thousand dollars. Well, it was money that was put in that was to cover his overdraft. From the 2d of May, 1910, up to July, we let him overdraw something like three thousand dollars. We took his note for it same day in July, July 11th. He made no overdrafts

(Testimony of F. M. Berg.)

with us after that time. Yes, he did have an overdraft at that time, but it was a small amount. No, he did not get any more money from the bank outside of his small overdrafts. The largest overdraft, I think, was three or four hundred dollars, yes. In regard to those overdrafts, we were instructed after June 10th not to let him have another cent, by the bank examiner. The officers of the bank did not give me any such instructions, the officers of the bank did not happen to be there after that time. They were around after that. The officers of the bank, or the cashier of the bank, did not give me any strict instructions not to let Hanley have any more money, but it was really settled that I should not let Hanley have any more loans after that date, after June 10th. It was the bank examiner that did it, but there was instructions, and I guess they were final, from the bank examiner. It was early in the year that the cashier or the officials of our bank first decided that Hanley's credit was bad and that his account must be watched, they were beginning to be careful and felt bad about it at the time along in February, when they got the security at Northport. After they got their security, I guess they did not begin to get worried about his account until the bank examiner came, that was June 10th.

Q. What steps were taken to protect the bank right after that?

A. Well, the bank examiner gave those instructions. It is not exactly what you asked for; I guess maybe I can tell you. On the 10th of June, he said to

(Testimony of A. J. Penrose.)

report to the office in Seattle, the bank examiner, every week, and not to let him have any more money, and go ahead and fix it up, and get whatever money they could out of it—out of Mr. Hanley—and Mr. Irish got to stirring around right away, but he did not seem to be able to do so, and he let him have this other three thousand dollars more to pay his labor payrolls than anything else, to keep from starting trouble right away. It is not a fact that I considered Hanley perfectly good and perfectly solvent, and a good customer, and did not worry about his account until the Crescent Lumber Company attached him.

The COURT: The material issue is, whether he paid fifteen hundred dollars for this property, and we have drifted a long ways from it.

Mr. BIRDSEYE: I thought possibly the solvency of the other Hanley would have something to do with it.

The COURT: There is no question as to his solvency after they started to press him; he was on the ragged edge a long time before this attachment, whether the bank officers knew it or not.

Witness excused.

A. J. PENROSE, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is A. J. Penrose. I was employed at Mr. Hanley's mill in 1910. I worked there from about April 21st or 22d, as long as he was there.

Q. I will ask you if you had a conversation with

(Testimony of A. J. Penrose.)

James M. Hanley about his deed to these four lots out in the Northeast Addition to Ross Park at any time.

The COURT: The deed in this action, is it?

Mr. LUND: Yes, sir.

The WITNESS: One time I had a little conversation with him. That was, I don't just remember the date; it was about the last week in June, 19th, it was. That was here in town. I met him one evening on the corner of Riverside and Washington.

Q. That was in 1911?

A. This last June. I had a talk about his having had a deed from his father to those four lots out there. We had a conversation here about what he intended to do. He said that he thought that probably he would run a wood saw this winter, in a small woodyard in those lots the old man—he spoke of his father as “the old man”—gave him, but he said he did not know that he could hold them on account of the old man transferring them to him too late. That is about all of the conversation I had about that.

CROSS-EXAMINATION.

Q. Was this in June of this present year, 1911?

A. Yes, sir, about the last week in June, as near as I can tell now. The conversation was on Riverside and Brown. My wife was present and James Hanley and myself. The matter came up in this way, we had quite a conversation there that evening, the first time I had seen James since he came back from the north. That was after I had been to Alaska, after I came down from there. I had quite a visit with him. He came to say this

(Testimony of A. J. Penrose.)

that I have related here in this way, he told me that he had got a letter from his father, that he wanted him to come up there and work for him; he was hesitating about going; he said he and his people did not like to go up very well and he told about what he was thinking of doing if he stayed here. He was thinking of fixing up and running a wood saw on those lots that his father gave him if he could hold them, but he said he didn't know that he could hold them, for the old man transferred them to him too late. He used the words "which his father gave him," yes, sir. He referred to the lots over there. I am pretty sure he used the language "the lots which his father gave me." He did not say which he got from his father. He did not say that he could hold them because the old man gave them to him too late; he said, "transferred them to him too late." He did not say that he had been sued at the time, to set aside that conveyance, and suit was pending in this court. I and my wife went to Alaska last summer to work for James P. Hanley up there, if I remember right. He was in charge of two mills at the time I was up there.

Q. The upshot of it was, that you and your wife, or some of you, had a row with him and came back, is not that so?

A. We went up there to work at a mill that he had not started yet, so as long as he had not started that mill and he puts us to another place and there was a larger mill there, and he wanted some work done, he did not want to do as he agreed. I or my wife had difficulty, not very much. I did not say that my wife had a very

(Testimony of A. J. Penrose.)

serious trouble with him; ask Mr. Hanley, he can tell you more than I can. I and my wife never said, among other things, that we would even up with him.

Q. Didn't you say in substance, or say among other things, that you would see that Hanley did not get a cent from this property of his that was gone into bankruptcy, from those lots?

A. I did not hear her say it, and I did not say it. It is not a fact that I and my wife ever made any boasts that we would see that he lost this law suit; I heard her tell you that; that is all I know about it. That was my wife, she said so, that is, Mrs. Penrose. I heard what you (Mr. Birdseye) said you were going to do; you said you were going to sue Hanley for ten thousand. She did not say in substance that she would see that he lost this law suit. She said you (Mr. Birdseye) were going to lose it. She did not say why. She did not say she would have anything to do with it.

Q. She just made the prophecy that I would lose the case?

A. Yes, sir; she called me up one evening and told me what she said over the 'phone, but I did not hear that, I was not on either end. I have pleasant, friendly feelings toward Mr. Hanley, as well as I ever did. He tried to get me, but he can't no more, but I am as friendly as ever. That would not influence my testimony, not a bit. He tried to get me, by getting me up there, and he said I could not get out, and put me to work, up in Alaska. I don't feel pretty sore about it, not at all; he paid my way up there and had to pay it back.

(Testimony of R. J. Danson.)

RE-DIRECT EXAMINATION.

Q. Was it Mr. Birdseye that was doing the boasting about saving Mr. Hanley eight or ten thousand dollars?

A. Yes, more than Mrs. Penrose was. Mrs. Penrose told him he was going to lose the law suit. I have no feelings against Jim Hanley, he was not up in Alaska. He did not induce me to go up there. I don't understand that the father has any interest in this law suit, except to save the property for the boy, if he can.

WITNESS EXCUSED.

R. J. DANSON, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is R. J. Danson; I am a lawyer. I recall a meeting which was held in your (Mr. Lund's) office in the Rookery Building, some time the latter part of July, 1910, when I was present representing Mr. Hanley, I recall the time. I am not real sure about all who were there; I think yourself (Mr. Lund), I know Mr. Hanley and the representative of this company, I think, the Crescent Lumber Company. I don't remember Mr. Moore's name now. I think Ben Kiser was there. Now, whether anybody else was present or not, I don't recall. I know Mr. Kelly and Mr. Olson from Deer Park, I think they were both present too; I am not sure whether young Hanley, Jim Hanley, was there on that occasion; I am inclined to think he was—yes, I think he was. I remember a discussion coming up as to Hanley having conveyed four lots over here in Northeast Addition to Ross Park to the boy.

(Testimony of R. J. Danson.)

Mr. BIRDSEYE: I think Mr. Danson was there as attorney for Mr. Hanley, and I will object to the testimony as coming from the attorney of the client. He has already testified he was the attorney for Mr. Hanley; he took part in the conferences, I apprehend, and whatever conferences occurred, it seems to me the attorney should not be permitted to reveal against the client.

The COURT: I will reserve my ruling on it; I am of the impression that a conversation given under these circumstances is not privileged.

Q. State what Mr. Hanley stated, in the presence of this young man there, as to the purpose of this conveyance, and whether or not anything was said about any consideration for it passing.

A. The substance of what was said by Mr. Hanley was that he had made this conveyance to his son for the purpose of bringing this Crescent—was it—Crescent Lumber Company to time; that the boy had paid nothing for the property; the boy said nothing in response to that, that I remember; quite certain that he did not; he did not contradict it, I know. I know I said some things in reference to this particular matter, but what I said perhaps is not necessary.

The COURT: It is not material.

The WITNESS: This was the first time I had learned of these transfers. I think you (Mr. Lund) told me in his presence, and I made certain remarks about it.

CROSS EXAMINATION.

The WITNESS: I was acting as attorney for James P. Hanley at that time. This conference and the occa-

(Testimony of R. J. Danson.)

sion has to do with legal business I was handling for him with reference to the claims, I think, of this Crescent Lumber Company, and also of the bank at Deer Park. I don't remember the name of the bank—Deer Park Bank, was it?

Mr. LUND: First State Bank.

The WITNESS: First State Bank of Deer Park. This conversation was made with reference to that matter, I say. I am very sure this boy, Jim Hanley, was present. Mr. Hanley, in these remarks, referred to some lots; I think Mr. Lund and I had been up to look at before that, or else went out after, I think before, North Addition to Ross Park, I think they were abutting upon the railroad track of the Great Northern Railway, or some railway out there any way; there were four lots, as I remember that he had owned, and which he had talked about turning out as security for these claims. After refreshing my recollection this conversation did not refer to some personal property and bill of sale which had been made to the son, or horses and cattle and a mill outfit, I don't think so. I know it referred to these lots. Now, during some of the time, we had some talk about the bill of sale of other property, also some horses and things in Stevens County. I could not be mistaken that this statement of his, of the transfer, referred to the lots and not to the personal property, no I could not; I am pretty positive of that because, if I remember correctly, there was also something about having transferred a house and lot to the daughter.

(Testimony of R. J. Danson.)

Q. Did Hanley say that he had transferred that to "tony up" the Crescent Lumber Company?

A. I don't remember whether that was talked over at that same time or not, but my impression is that it was; I know that we discussed it. Hanley did not make any estimation as to how that conveyance of these town lots to his son was going to bring the Crescent Lumber Company to time. I would not be able to say the date of this conversation, but my remembrance is it was in July, I think it was, the time that I was to take a vacation, if I remember correctly, and it was either in July or August of that year. I would not be able to say for certain whether it was after the Crescent Lumber Company attached Hanley.

Q. Weren't you there trying to adjust matters growing out of the attachment, of the rush of creditors that was precipitated?

A. I know we were there trying to adjust the claim of the Crescent Lumber Company, and I know also that the bank at Deer Park was fixed up, they had a large amount of claim, quite a large amount, against Hanley for money which the bank had advanced to him. I could not say for certain whether it was later than the time of the attachment of the Crescent Lumber Company on the 22d or 24th of July, 1910; I am rather inclined to think it was about that time, but I could not say whether it was before or after; it is a long time, and I have not thought of it since. I withdrew from the case and from acting for Mr. Hanley shortly after that, within a very few days, and I have never had the matter in hand since

(Testimony of R. J. Danson.)

or thought of it to any extent, except Mr. Lund mentioned it to me here a few weeks ago, just asked me if I remember about the meeting, and I said I did. I can't remember how long ago this conveyance you refer to was made, on the 2d of May; I know that I did not know of it until Mr. Lund mentioned it, and I was very much surprised that he had made the conveyance, but I know that I censured him severely for it. I censured him because I felt that that was a good cause to sustain an attachment against him and showed that he was acting fraudulently. I think I did know at that time—I think that I had been consulting with him for some time—I know that he was not in good financial condition when he made the deed.

Q. You think he was not?

A. I know he was not. I do not recall at that conference talk of this kind, that these lots were purchased on either side of intervening lots 517, 516 and 18, two other lots lying in between them, at that conference or that conversation, that someone asked Mr. Hanley why he bought lots in that position, with intervening lots, and he said that it was so that he could kind of have a string on those lots in the future, and buy them up in the future, or that in substance; I don't recall that. I do not recall any one saying in response to a conversation of that kind, that that was a "Yankee trick," or "regular Yankee trick"; that is not what I had in mind; Mr. Lund and myself—I took my horse and buggy at the instance and with the knowledge of Mr. Hanley, and took Mr. Lund out over this property, and I think it was done be-

(Testimony of R. J. Danson.)

fore we had the conference, if I remember right, I am nearly certain about that, with a view of his turning out this property as security for these claims, and I had advised him to do that. That is why I am so positive about it, and I remember I was driving out and looking at those lots, and then going up into Lidgerwood Park Addition and looking at a house that he owned and that also was to be turned in.

Q. Now, that was a part of the proposed agreement, that he should turn in everything, the wife should join in the mortgage of their homestead at Lidgerwood, and the boys should relinquish their claim for wages; that was a part of what you were talking about?

A. I think there was something said about boys' wages. It is not a fact that in that proposed agreement that James Hanley, Jr., the boy, was mortgage these four lots. They were considered the property of the elder Hanley, absolutely, and I know I was amazed when I learned that he had conveyed them to the boy. I am as fair as a man can be, I think, about this; of course, there is always a possibility of being mistaken, but I don't think here I could be. I talked with Hanley about the matter alone, I lectured him, if that is the question. I was there as his attorney, I was anxious—I thought if Mr. Hanley acted fair and honest that he could—

Mr. BIRDSEYE: I don't believe I care what you thought about it, Mr. Danson. I am not asking you about that.

The WITNESS: I had no other business there at that time than to act as his attorney.

WITNESS EXCUSED.

(Testimony of B. H. Kizer.)

B. H. KIZER, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is B. H. Kizer; I am a member of the firm of Graves, Kizer and Graves, lawyers. My firm were attorneys for the Crescent Lumber Company, which was a partnership and had a claim against J. P. Hanley some time in July, 1910. I recall having a conference at your (Mr. Lund's) office, along the latter part of July.

Q. Will you state who was present and what, if anything, was said by Mr. Hanley with reference to why he had made a transfer of certain lots in Northeast Addition to Ross Park to his boy?

Mr. BIRDSEYE: We object, for the reason Mr. Hanley is not a party to this record.

Objection overruled.

The WITNESS: You (Mr. Lund) were present, Mr. Hanley was present, his attorney, Mr. Danson, was present, one of my clients, Mr. Moore, was present, and I believe two other gentlemen, whose names I now forget, one of whom I think I recognize in the court room, officers of the State Bank of Deer Park.

Q. Mr. Irish and Mr. Olson?

A. Mr. Irish and Mr. Olson, I believe, and my recollection is clear that young Mr. Hanley, whom I think I recognize, was present; the conference had been postponed, I think, once or twice waiting for him to come down, or something of the sort; he was supposed to have

(Testimony of B. H. Kizer.)

some information about what was the state of the stock up there; we were anxious to know about what stock they had on hand, he had been running the mill and knew about it, and all of the subject of inquiry in regard to ascertaining how much stock this yard had. We were negotiating with respect to turning over the assets to a trustee to run, as it appeared that Mr. Hanley was in a state of serious insolvency, and I had a list there of certain property which Mr. Hanley had given to the Crescent Lumber Company as a basis for credit, which he owned, including four lots in Lidgerwood, which I think had been sold on a contract, and a small payment made—four lots in an addition to Ross Park, Northeast or Southeast Addition to Ross Park, and the home property out in Lidgerwood, and it was brought up by you (Mr. Lund), I believe, that conveyances had been made quite recently of the home property to the daughter and of the other lots, the four lots, to the son, and Mr. Danson seemed very much surprised, and turned to Mr. Hanley, Sr., and said, "What did you do that for?"

Mr. BIRDSEYE: I object to that as hearsay. Let him tell what Mr. Hanley said, and leave out this detailed recitation.

The COURT: Objection overruled. Go on and state what was said about the transfer of these lots.

The WITNESS: Mr. Hanley replied that he wanted to bring the Crescent Lumber Company to time, that he wanted to make them live up to their contract, that is why he did it. I think I asked the question, "You were not paid anything for it, were you?" or "There was no

(Testimony of B. H. Kizer.)

consideration paid?" or some such question as that, and he replied again, "I just wanted to bring those fellows to time; I thought that would be a good way to do it." I think it was Mr. Danson or yourself (Mr. Lund) remarked that that was a very queer way of doing it.

Mr. BIRDSEYE: I object to that; it is very interesting, but not competent.

Objection sustained.

Complainant excepts and exception allowed.

The WITNESS: The young man Hanley did not make any statement to the contrary there. He did not say anything at all on that subject; he may certain questions; the question was asked him about the stock.

CROSS EXAMINATION.

Q. Was it this young man that is sitting here, (indicating), or the young man sitting second from the lady back there?

A. This young man (indicating), I don't recall that I have seen the other young man. I think it was this gentleman here present. Now about seeing the other young man, I should not be positive. If it should be testified by several witnesses that he was working in the mill there at Northport, I might be mistaken. I say that is my recollection upon seeing them now; at all events, each of them was introduced as a son of Mr. Hanley to me, and I supposed it was this young man here. As to my best judgment whether this young man was present at that conversation, I will just simply say—I withdraw the remark that it was that young man—and say

(Testimony of B. H. Kizer.)

it was the son of Mr. Hanley who had made the conveyance.

Mr. LUND: Q. To whom the conveyance had been made?

A. Yes; I won't undertake to identify him by face, because it was too long ago, and I saw too little of the son. I don't recall at that conference or some other that we had about the same matters, of Mr. Hanley being questioned why he had purchased these four lots, with two other lots intervening between them. I do not recall someone characterizing his answer as, "It was a regular Yankee trick," or "Yanke trick." No particular discussion was had at that time, or any of those times, about transfer of titles to one of his sons; I think probably it was mentioned if he had conveyed practically all of his property to his children; I think Mr. Lund mentioned it in some such phrase as a——. It is not a fact when I referred to what Hanley said, he was trying to bring the Crescent Lumber Company to time, was about the transfer of certain chattels. He referred to these Lidgerwood, or to these Ross Park lots, these four lots, I am speaking of. I was present and represented the Crescent Lumber Company, and Mr. Moore, of that company, was also present. Yes, Hanley had the hardihood to say in their presence that he had transferred the property simply to bring them to time; absolutely there is no question about it, as far as I am concerned; that is substantially what he said; it is very clear to me, I am still attorney for the Crescent Lumber Company, our firm is attorney for the Crescent Lumber Company. In

(Testimony of B. H. Kizer.)

a nominal sense, the matter really passed out of our hands, I turned it over to Mr. Matthews, but I suppose our firm is supposed to represent them. Mr. Hanley volunteered that remark on that occasion, that he transferred those lots without consideration. As to what he said, I can only repeat what I have said; I think I have given all that he said. My recollection is, that I asked him if anything was paid; I asked him by anything was paid by him, by the son, yes, or by the daughter either, for the other property, and he made the reply, "I just wanted to bring those fellows to time; I wanted to make them live up to their contract." Didn't say that nothing was paid, but simply wanted to bring those fellows to time; yes, that is it. We began to represent the Crescent Lumber Company shortly before the attachment was sworn out; I should say about the 16th or 17th of July. We did not appear for them as early as May 2d. I know nothing about any trouble between them and Hanley before the 17th of July, except what Mr. Moore told me. No, I don't think Mr. Hanley explained how this transfer of property to the boy was going to bring the Crescent Lumber Company to time. Some remarks were made about it, but Mr. Hanley did not volunteer anything in explanation. The date of this conversation I have detailed was quite late in July; it was just before I took my summer vacation, which I took that year. I feel pretty sure it was after our friend had gotten out the attachment for the Crescent Lumber Company, a few days before, I don't think that they met Mr. Hanley before the attachment was taken out. I think that one of

(Testimony of James M. Hanley.)

the grounds for the attachment was based upon the disposition of the property fraudulently.

Q. And in the face of that, and in the presence of you, the attorney for the Crescent Lumber Company, Hanley confessed that he said he had conveyed it to bring them to time?

A. His lawyer and he both seemed to confess. Hanley seemed to be in his right mind. At that time he did not appear to be acting under any duress or influence. Mr. Hanley seemed to be desirous of repairing a wrong he had done. I think at that time he was acting properly and rationally.

Mr. LUND: In connection with this deed that we have here this morning, I want to have in the record here the recitation of the consideration as five dollars for what it is worth.

The COURT: Very well.

WITNESS EXCUSED.

JAMES M. HANLEY, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: In 1910 I carried an account with the Northport Savings Bank. I would not say positively I opened that account on March 18, 1910, by a deposit of \$90.00; somewhere around about that time, though, for that sum. I continued to carry a small balance in that bank until probably some time in the fall of 19—, hold on a moment; yes, some time in the fall of 1910. I believe that account exceeded the sum of ninety dollars at some times; I believe it got as high as \$175.00. I dis-

(Testimony of James M. Hanley.)

remember now whether on the 2d day of June, 1910, I had a balance of \$27.50; it is hard to remember a little account like that. I guess it was not very much; did not amount to much. That small balance continued for quite a little period of time, a small balance of that kind. I never had any sum in the bank there, I believe, to exceed \$175.00 at any time. I never had any bank account anywhere else. I was living at Northport at the time, and working in my father's mill, upon the boat, and had been for quite a period of time.

CROSS EXAMINATION.

The WITNESS: This bank account I have been referring to was at Northport.

Mr. BIRDSEYE: That is what you were referring to Mr. Lund?

Mr. LUND: That is where the mill is located, at Northport.

The WITNESS: I opened that account, probably, the first of the year 1910, somewhere along there, in the spring; I don't know exactly what date. It was just small checks that I drew over at the mill that I deposited there. I was paid in checks at the mill. I found it convenient to have an account at the bank, kept an account there; I had a check book to pay my bills around town as I spent money. The money that I got from my grandmother never had anything to do with that account. The reason it was not put in the bank was, it was her request it be not put in the bank when she turned it over to my mother, and she had always refrained from keeping it in banks; so, according to her

(Testimony of Charles P. Lund.)

wish, I never put it in the bank. She did not have any faith in banks. I deposited none of this money in that bank account.

The COURT: What is your age?

A. Twenty-four, the seventh of last November.

Witness excused.

CHARLES P. LUND, sworn on behalf of complainant, testified:

DIRECT EXAMINATION.

The WITNESS: Some time about the 24th or 25th of July, to the best of my recollection, I was consulted by the officers of the First State Bank of Deer Park, in reference to this Hanley indebtedness, at that time this attachment of the Crescent Lumber Company had been levied. We were trying to work out some solution whereby the bank could be protected or saved the biggest part of their debt, and in pursuance of that effort we had a conference in my office, I should say it was along about the latter part of July, probably three or four days intervened from the time I was consulted about it, and there was present, as had been stated here, Mr. Danson, Mr. Hanley, Mr. Olson, Mr. Kelly and Mr. Irish—who was then the cashier of the bank, and was responsible for these loans—and Mr. Moore, a partner in the Crescent Lumber Company, and Mr. Kizer; in that connection, John Hanley was there, and on another occasion both John and the other boy.

The COURT: The defendant, you say?

The WITNESS: Were in my office, talking about this matter.

(Testimony of Charles P. Lund.)

The COURT: James M. Hanley?

A. Yes, sir. And the question of these transfers came up, of the lots out there, in Northeast Addition to Ross Park; also the house in Lidgerwood and bill of sale that had been given by Mr. Hanley to the boy for these teams and wagons and paraphernalia, in connection with his teams for his logging camp, and as attorney for the bank, I was interested in ascertaining the facts concerning the transaction. Both Mr. Kizer and myself inquired of them very particularly about it. He made the statement that he had made the transfer for the purpose of bringing the Crescent Lumber Company to time, substantially as Mr. Kizer narrated here, and Mr. Danson, as he stated that was the first intimation he had of it, and he had something to say about the propriety of it. Mr. Hanley and his boys were here on various occasions and the matter was talked over and how the things were to be solved, possibly.

The COURT: One or both of the boys present on this occasion.

The WITNESS: Yes, sir.

The COURT: I say was one or both of them present; which was it, you say one present on one occasion and one on the other?

The WITNESS: Yes, I think John, that is the young man, if I remember their names correctly, John is the young man in the rear, and this young man here. Now, my best recollection is that the first time we met, I don't think that that was at that conference, that John was there; and at the second, that both of those boys

(Testimony of Charles P. Lund.)

were there. The mill had shut down after the attachment was levied, and the sheriff was in charge.

The COURT: Q. The conversation occurred at the second conference, when both boys were present?

but we were trying to work out some scheme to settle

The WITNESS: That is my recollection about it, but we were trying to work out some scheme to settle the matter; the bank thought that Hanley could work out the situation a good deal better than a trustee could, because he was familiar with the situation, and finally the Crescent Lumber Company agreed to reduce its indebtedness—by the way, in that connection, Mr. Hanley said that the Crescent Lumber Company had returned some of his drafts; the Crescent Lumber Company under the terms of their contract was to remit to him all over seven dollars a thousand on this lumber, and credit the seven dollars a thousand on his indebtedness to them, and Hanley claimed the Crescent Lumber Company had refused to honor some of the drafts, and they had been returned, and that was what his meaning was in bringing them to time, making them live up to their contract. The Crescent Lumber Company finally agreed that they would reduce their claim to six thousand dollars, provided that Hanley——

Mr. BIRDSEYE: I object as immaterial, it cannot bear upon the issues in this case, really.

The COURT: Confine yourself to any agreement or statement that Mr. Hanley made.

The WITNESS: I am going to state, trying to give Your Honor a little insight into the thing, and how it

(Testimony of Charles P. Lund.)

fell down. We met at Mr. Danson's office, after they agreed to reduce their indebtedness six thousand dollars.

Mr. BIRDSEYE: I object to that as immaterial, not bearing on this case.

The COURT: I will overrule the objection, and disregard so much as is immaterial.

The WITNESS: Took a mortgage on these four lots out here, the home place out at Lidgerwood, for the six thousand dollars, credit on that six thousand dollars the proceeds of the lumber that had been already shipped to them, and then four cars additional were to be shipped immediately, and out of that they would credit all over and above one thousand dollars on this mortgage. That one thousand dollars was to be deposited to Hanley's credit in the bank, and he had a claim against Hutchings and somebody else for something like eighteen hundred dollars, the balance due on the old mill that he had sold at Deer Park, and the bank agreed to take over that claim, that is, to take Hutchings for it, and credit his account; that would give him approximately three thousand dollars and upwards to pay his labor. That was the scheme we had worked out, and we also thought that any——

Mr. BIRDSEYE: I object to what was thought.

The WITNESS: This is what was agreed to: the boys claimed to have some small sum due them for labor, they were to waive their claims as against these claims of the bank. Mr. Hanley agreed to that, and when it came to carrying it out, he said his wife would not mortgage her homestead out there.

(Testimony of Charles P. Lund.)

The COURT: Was the defendant in this action consulted in regard to it?

A. Well, he was here during a part of those conferences, and the last one, when we were in Will Graves' office, Mr. Kizer had gone away, Mr. Will Graves prepared an agreement and everything had been agreed to. John Hanley was sent up north and they actually loaded the four cars and shipped them to the Crescent Lumber Company, pursuant to this agreement, and then the thing fell through. But Jim was in Mr. Graves' office at the time the thing was finally—that agreement was drafted, and when Moore and myself were in Broberg & Schuler's office to pay that small balance that was due on one of those lots, something like forty-eight dollars, I think, Mr. Moore and myself went down there from Mr. Graves' office, for they had the abstracts covering the property, and we went down. That is substantially what occurred there.

CROSS-EXAMINATION.

Q. Are you sure, Mr. Lund, that Jimmie Hanley, this boy, was present at that conversation you first related?

A. Either he was present at that, or—well, he was present at the time when the statement was made, or when Mr. Hanley was asked why he had made those transfers to his own family, and he stated that it was for the purpose of bringing the Crescent Lumber Company to time; and somebody said, "Well, you succeeded in your effort, you brought them to time." That did not refer to the transfer of personal property; we were

(Testimony of Charles P. Lund.)

discussing all of those transfers; we had all of the facts before use. Mr. Danson and I had been out there. Mr. Danson drove me out early one morning to look at both the Lidgerwood house and these four lots. We were at that time discussing all of those transfers, and all of those transfers included the transfer of the personal property; it included the transfer of the home place to the daughter Katy, and we were discussing all of those.

Q. With reference to those, Mr. Hanley said, speaking of all of them, that his plan was to bring the Crescent Lumber Company to time, or did he single out the transfer of the lots to Jimmie?

A. No, he said all of those transfers were made without any consideration and for the purpose of bringing the Crescent Lumber Company to time. He was particularly asked whether there was any consideration. I think he spoke of the transfers generally, but we discussed in detail the different properties, and discussed in detail what those four lots were probably worth. I don't think Mr. Danson and Mr. Kizer testified here they did not hear anything said about the transfer of the personal property, in substance. I heard what he did say on that subject. My version is, in speaking of all of those transfers, Hanley said with reference to all of them, they were made to bring the Crescent Lumber Company to time, and there was no consideration for them at all. He said all of the four lots in Ross Park Addition, the Lidgerwood house—he said that specifically so there could be no mistake about it, talking about them, mentioning them in the sale. I called Mr. Dan-

(Testimony of Charles P. Lund.)

son's attention there at that conference to the fact that Hanley had made those transfers; that was the first intimation that he had about it; Danson was Hanley's attorney at that time; I don't know how long he had been. Mr. Danson pretended there that he didn't know any transfers had been made; he expressed surprise, and in the language of the street, he "roasted" Hanley pretty strongly there for it.

Q. What business had he, as Hanley's attorney, to "roast" him, while we are on that subject, in the presence of Hanley's creditors and their attorneys?

A. I don't know about what business he had; he did it, that is the fact.

Q. Did Danson profess ignorance of the drawing of those instruments of conveyance, did he say they were not drawn in his office, or did he disown them entirely?

A. Why, when the fact was mentioned, he turned to Hanley and wanted to know why he did such a thing. It did not develop there what attorney or notary or conveyancer had drawn the instruments; the instruments were not before us at all; we were just discussing them in the abstract. Hanley was asked to explain how the conveying of that bulk of the property this way was going to bring the Crescent Lumber Company to time, and he didn't do it very satisfactorily. He did not attempt to explain it; it was just passed over in a sort of joking way. Somebody said, "Well, you succeeded in bringing them to time"; having reference to the attach-

(Testimony of Charles P. Lund.)

ment. They attached the property immediately after the filing of those complaints.

Q. Is it not a fact that the conveyance of the chattels was later in July, and the conveyance of the lots to James Hanley, the boy, was along the 2d of May?

A. The deed to the daughter is dated on the 3d of July, and I don't know when the chattel mortgage is dated. This deed is dated on the 2d of May, but they were filed for record in the Auditor's office at practically the same time, as I recollect it.

The COURT: Q. You mean the chattel mortgage, or bill of sale?

The WITNESS: The bill of sale; it is not a chattel mortgage, it is a bill of sale. There is absolutely no question at this time that Hanley declared that, in substance the conveyance of these lots to his son Jimmie was done simply to bring the Crescent Lumber Company to time, and without any consideration. It was a matter of very great surprise to me when he filed his petition in bankruptcy that these lots were not included.

Q. Now, Mr. Lund, in the negotiations looking to an agreement for security on this property, was not James M. Hanley's name, the name of the son inserted into the instrument, and did not the proposed mortgage run from James P. Hanley and wife to James M. Hanley, a single man?

A. No, I will tell you, as a matter of fact, Mr. Graves made a mistake. The paper that he prepared is

(Testimony of Charles P. Lund.)

John instead of "James." I don't know how that mistake was made; I am not responsible for it.

Q. Is it not a fact that the name of the boy was to be in that mortgage and it was understood that he had the title to those lots, and he was to join in the mortgage, when they knew that he had the record titles of the lots and the note was signed?

A. There was to be a note of six thousand dollars, payable on time, that note was to be executed by J. P. Hanley and his wife. This young man was not to sign the note. He had the record title to the property, and they were all to sign the mortgage, I suppose. It was not a condition for the settlement, that the Hanley boys would relinquish all claim for wages in the mill for the past year or so; the only suggestion about that was this, that those boys ought to be interested in their father working out of the tangle that he had gotten into, and they ought to be willing to postpone their claims to those of the creditors, particularly the bank that was willing to endeavor to assist him working it up, because they agreed to buy this two thousand dollar claim of Hutchings, and let them have a chattel mortgage on the lumber and they agreed to relinquish four car lots of it to the Crescent Lumber Company and take a thousand dollars back. Of course, the First State Bank of Deer Park was to have a second mortgage on all of this property as well. I had no knowledge or information of when the trouble or the pressure began from the Crescent Lumber Company against Mr. Hanley, except what I gained from Mr. Hanley himself and his talk

(Testimony of Charles P. Lund.)

here. I have no way of forming any idea as to when they would indicate the pressure began, because he did not testify anything that I recollect. I remember very distinctly that he stated they were not living up to their contract, and I am very clear he said they had returned some of his drafts. No, I did not act as Mr. Hanley's attorney at any stage of those negotiations, any more than I felt—I was not acting for him, was not to be paid anything by him, never considered that I——

Q. Did he not, after he and Mr. Danson fell out, did he not bring to you all of his papers in this matter and you had them for some time, and you advised him and handled the matter for him?

A. No, he had agreed two or three times on something that was to be done, and then he backed out. When Mr. Danson quit, he quit because he would not live up to his agreement. That was why Danson pulled out. I think it was Danson who pulled out, instead of Hanley.

Q. What is the fact about Hanley bringing his papers to you and you acting for him?

A. Why, when the matter had all been agreed, it was my understanding that I would see that the papers were fixed up according to the agreement that had been made; I was not acting for him, however; he may have brought some papers down there and left them. I don't know that I ever had his papers in my possession.

Q. For whom, now, and for whose benefit did you undertake to see that the papers were executed according to the understanding?

(Testimony of James M. Hanley.)

A. I was particularly interested in the State Bank; I happened to be well acquainted with the principal stockholders; they were clients of mine, and I had a little stock in the bank myself. As a matter of fact, I did not, I never did act as Mr. Hanley's attorney in the matter, never was employed by him. If he left any papers there with me, it was not with me as his attorney; it was either for safe keeping, or something else. I can't say how long I held his papers; I can't say that I had any; I don't believe I did. I don't think I did advise him what to do; if I did, it was purely gratuitous; I never got a fee for it and never expected any.

Witness excused.

Thereupon plaintiff rested.

Trial Resumed—January 5, 1912, 10 a. m.

JAMES M. HANLEY, the defendant, sworn on his own behalf, testified:

DIRECT EXAMINATION.

I am the defendant in this action. My name is James M. Hanley.

Q. When did you first begin to talk with your father, James P. Hanley, about purchasing the lots in question in this case?

Mr. BIRDSEYE: I think that is immaterial, if the Court please.

The COURT: One of the circumstances, I presume. You may proceed.

Plaintiff excepts and exception allowed.

A. Before he bought that property, he took me over there and showed it to me before ever he bought those

(Testimony of James M. Hanley.)

lots, and told me that it looked like a pretty good investment, and talked it over, but I did not bother him about it; did not do anything with it. Then later on, in the spring of 1908, when they started the lumber yard there, I was going to take an interest in it, was going to incorporate it, and I came down here for the purpose of going through with it, and then this partner, Joe P. Kelly, backed down; he would not incorporate; he wanted to have a company. In the spring of 1908 I was living at Northport, and then this last transaction in 1910. I talked with my father off and on from the spring of 1908, different times, until I took the deed for these lots, about buying the property; I was figuring on starting a woodyard there; I had always worked in the mill in the summer time, hardly having anything to do in the winter time in the mill, and I thought I would get the property and run a woodyard in the winter time.

Q. What was the fact about your saving up the money you had received from your grandmother, to buy these lots?

A. Well, I had the money; I was not saving it for that particular purpose, but when I decided I wanted them, I had that money available, that is, the money I put into them. I paid my father fifteen hundred dollars for the lots. The payment was made in cash, in gold and bills and paper money. I got that money from my mother—I got it from my grandmother, and she gave it to my mother to keep until I was of age, and when I was of age she turned it over to me. I became of age at Northport, at the time I was twenty years old.

(Testimony of James M. Hanley.)

My present age is twenty-four, the 7th of November. I received the deed for these lots on the 3d of May. That was the deed in question from my father and mother. I received it at Northport. After I got the deed I kept it until I went north, this summer, and I had a lot of my stuff and baggage was stolen up there, and I lost everything I had.

Q. What did you do in the way of recording that deed?

A. Well, I was busy up there at the time, working on the boat, and I did not get down; I thought maybe I would be coming down any time and have it recorded, and besides there was a payment on one of the lots that was not quite finished, a small amount, and I thought I would wait until that was paid up, and have it recorded, and then when this trouble came up, in July, I thought the best thing I could do was to get them on record right away, have them sent down. I had delayed until that time. When I took this deed and paid the money on the 2d of November, 1910, my father's financial condition looked all right to us; we always thought it was going along all right. I had not, up to that time, heard of any business trouble, or financial trouble on his part. It was not until after the Crescent Lumber Company started this action, and all of the creditors got scared and started pressing their claims, along in July, that was the first time we thought there was financial difficulties. It was about the latter part of July when the Crescent Lumber Company filed their attachment,

(Testimony of James M. Hanley.)

I forgot the exact date. So far as I know, nobody was pressing my father for payment prior to that time.

Q. What was the condition of his business and his plant?

Mr. LUND: This witness has not shown himself to have any knowledge about it at all.

Mr. BIRDSEYE: Q. Where were you living at that time?

The WITNESS: At Northport, with my folks. I was working on the boat for my father. That boat was being used in towing logs to the mill from up the river. I was working at the mill up the river and down all the time at home, pretty near every night I stayed at home. I took part of my meals at camp and at home. I saw my father every day. He used to talk about his business. I had general knowledge as I saw things of the general condition of the business. There was nothing occurred up to that time to give me an intimation that there was financial trouble; we always figured we were going to make good, planned on a good cut that summer; had a new boiler installed, so we had lots of power; the mill was running, and we figured we was going to get along all right, right up to the time the Crescent Lumber Company filed this attachment; planning on a big cut that summer. My purpose and intention in buying these lots from my father, I kind of wanted the property, and then he did not have such an awful lot of ready cash, and I told him that if he wanted to sell them, I would buy them, I had the money. I never sus-

(Testimony of James M. Hanley.)

pected or had any hint or intimation that that might interfere with or delay his creditors.

Mr. LUND: I object to that; that don't make any difference.

The COURT: Counsel are entitled to make up the record for another court here. I would suggest, however, I am convinced that the condition of Mr. Hanley was not such on the 3d day of May, 1910, that he could give property away; of course, if he sold it, he had a perfect right to sell it, and the only question in the case, in my mind, is as to whether or not there was a consideration given for this property. But you can make up your own record to suit yourselves.

The WITNESS: I was present in court yesterday afternoon and heard the testimony of Mr. Kelly, Mr. Olson, Mr. Danson, Mr. Kizer and Mr. Lund.

Q. What is the fact about your having been present at any of those conferences or conversations, either in the office of Mr. Lund, or Mr. Danson, or Mr. Will Graves, on any of those conferences, any of those testified to?

A. I positively was not in Spokane from about the 7th of July until the latter part of August; I was in Spokane the Fourth of July and went back to Northport the 7th and never came back to Spokane again until about the 28th or 29th of August, 1910. I certainly could not have been at any of those conferences. I was engaged at Northport during that time, running the boat; we had the wheel out of the boat; was repairing it at that time, that is, part of the time; other times I

(Testimony of James M. Hanley.)

was around there waiting; I had a telegram from my brother when these conferences were going on, to send those books on, they wanted to fix things up. I went up to the man who was in charge of the books and got the books from him and expressed them down to him, took him over to fix things up. In any of those conferences, or elsewhere, I never heard my father say that he deeded this property to me to bring the Crescent Lumber Company to time. I never heard him say, there or elsewhere, that he received no pay or consideration for this property. The way the five dollars consideration came to be mentioned in the deed when I paid fifteen hundred dollars, was just this way; if I happened to have a party to sell that same time, as a general rule I did not want the man, if I had a chance to sell it for more money or something, if the amount was not stipulated in the deed, why it did not show up, was all. I was raised with my grandmother; I stayed with her; I presume, as I can remember, as far back as I can remember, and she always had money; she used to have her money buried at one time in her garden out in our onion patch. When I was a small boy six or seven years old, I remember she gave me a dime one day and I went out and buried it in the garden; I thought maybe it would grow, when I was a small boy, and she always told me she would leave me something for taking care of her. I always took care of her, and stayed with her until she died; and at various times I seen her have money. I never seen her have the full amount she gave me; she never let me know; she kept it all of the time after I

(Testimony of James M. Hanley.)

grew up. While we were living at Deer Park my grandmother lived in a small house out behind, adjoining the other, a small distance away, one hundred and fifty feet or so. That is the building referred to by the plaintiff's witnesses as a chicken coop, but it was not no chicken coop. It was nice and comfortable; we had it fixed up, and stayed in it during the winter time, and had it papered, and it was fixed up pretty comfortably; nothing fancy or anything like that. It was papered with building paper; it was floored good; had a fire in it. The size of that structure was about sixteen by twenty. It had windows and doors in it. It was a comfortable place to live in. I stayed there myself all the time she was there, and my brother stayed with me, also.

Q. What is the fact as to the old lady, the latter years of her life, having been eccentric or peculiar?

A. Well, she was a kind of a peculiar old lady, as everybody used to say; even the Owen boys used to always make fun of her, and talked about her being a queer old lady, and she was getting old and childish and feeble; lots of times she would get mad at me for building a fire or something in the house, she would not like it, and she took chronic spells, and she would get over it again all right in a short time; she would just be as good as ever. I know from observation about grandmother carrying money on her person; she used to carry money, some of it in a sack; she used to have a string around her neck and carried it in sacks down here (illustrating).

(Testimony of James M. Hanley.)

Q. Who supported the old lady and paid her bills during the latter years of her life

A. Well, she supported herself.

Q. Jimmie, were you advised of any talk during these settlements, about you giving a mortgage on these lots, and giving up your lien claim, to help your father out?

Mr. LUND: Advised by whom?

Mr. BIRDSEYE: Was any such subject broached to you?

A. Yes, sir.

Mr. LUND: I object to that.

The COURT: He has answered the question, "Yes."

The WITNESS: I told my father when they came down here to fix up the agreement after this attachment was filed, that if I could help him out in any way, by giving a mortgage on the property, I would do it; I wanted to see the business go on, it was to my interest, so I told him that any agreement that he could fix up about giving a mortgage on the property, I would give it; I would help him out. I was not here at the time, I don't know whether any proposition of that kind was talked between my father and his creditors.

The COURT: I don't think this is material, except insofar as it is rebuttal of the conversations testified to by the witnesses yesterday.

Mr. BIRDSEYE: That is the idea, and I don't care to go any further.

The COURT: He has testified he was not there at all.

(Testimony of James M. Hanley.)

CROSS-EXAMINATION.

The WITNESS: The mill shut down immediately on that attachment being levied, and the property, all of it, was in the possession of the sheriff of Stevens County, under a keeper. I did not do anything in connection with that property while the sheriff was in charge. I don't know exactly now how long the sheriff was in charge. That attachment was levied about the 24th of July; from that time until they fixed it by agreement to ship out the lumber, it was in possession of the keeper under the sheriff of Stevens County; I don't know the date, I don't remember whether it was the 11th of August. Between the 24th of July and the 11th of August, I absolutely did nothing up there. I did not come down to Spokane when my brother and father did.

Q. Is it not a fact that you and your brother John were in my office on numerous occasions, together, when your father was not there, that you came up there looking for him?

A. I never was in your (Mr. Lund's) office at all, never at any time.

I was probably fifteen or sixteen years old, somewhere around there, when my grandmother died, in 1904, I think. At the time of her death, I first learned that money had been left to me. Mother had it. It was not shown to me. Mother stated that she had some money for me. She did tell me how much it was. She said it was twenty-five hundred dollars. I was living out there at the mill at that time at Deer Park.

(Testimony of James M. Hanley.)

From the time I was fifteen years old until I was twenty-one years of age, I may have talked about it once in a while, just asked her if it was all right, or something like that, or if she had it, I don't remember. I don't know as a matter of fact that I never did have any talk with her about it at any time. It is pretty hard to remember just when I did have any talk with her about it; that is a long time ago. I never saw the money or any part of it. I did not know where it was kept; I never bothered about where it was kept. The money was turned over to me when I was twenty-one. I was at Northport at that time. My mother had the money. It was delivered to me in the house where we lived then. It was handed over to me in gold and paper. My mother counted it out. I counted it. I don't exactly remember how much gold there was now. I don't know how much paper there was. The dimensions of the money was in twenties, tens and fives and bills; twenties, tens and fives in gold, and twenties, tens and fives in paper. I don't know how much of either. After I got the money I put it in a buckskin bag and put it in a fruit jar and sealed the lid up and buried it in an old stove down in the basement. Nobody knew that I had the money there. I certainly did not tell anybody where it was.

Q. Now, did you ever make any investment of any kind of any of that money, or put it anywhere, after you became twenty-one years of age?

A. I did; I invested fifteen hundred dollars of it in this property.

(Testimony of James M. Hanley.)

Q. I mean before that; you claim to have put fifteen hundred dollars into this property. Did you ever do anything with it, from the time you were twenty-one until you claim to have paid this fifteen hundred dollars?

A. Yes, I did; I used to take small amounts of it, and spend it once in a while. I spent it for different things; I had a launch up there that cost me quite a lot of money; I used to buy gasoline, and different expenses around. Spent money here in town. I would take money out of there as I wanted it. I probably spent one hundred and fifty dollars out of it. I never counted it; never counted it from the time I put it in there until I took it out. I never counted it over to see if it was all there; it did not look as though anybody had ever bothered it. My birthday was November 7th, 1908, when I was of age. For nearly two years that money lay there in that stove. I never counted it to see if it was all there; it looked as though it was all there. I never counted the whole works over. When I took this money, I took it at different times, in small sums. At different times, I took money out; I don't remember exactly how many times; it would be pretty hard to remember that. I generally took gold out. I talked a good many times about buying this property, as I say. I was thinking of going in partnership with my father and somebody else, running a lumber yard over here. That was after I became of age. I took out all of that other money that I had in that old stove in the ashes at the time I brought this fifteen hundred dollars here. I took all the money out, yes. I paid over fifteen hun-

(Testimony of James M. Hanley.)

dred dollars; I put the other money back into the stove. I kept it there until I came down here last fall. The money was always in this same place, while I was in Northport, for nearly two years.

Q. Now, is it not a fact, Mr. Hanley, that you people moved three different times while you were up at Northport?

A. Well, they lived in that small house there for the largest part of the time we were there.

Q. Answer my question; didn't they move and change their place of residence there three different times?

A. They did; yes, sir.

Q. And all of this time you left the money in that stove?

A. Yes, sir; I did not get the money until they moved in that last house. I disremember when they moved to that last house, but it was very shortly after we moved there. After we moved up there permanently we did not live in the mud house very long; it was the best one we could get.

Q. You know, as a matter of fact, you had not been living in that house at the time your father filed this petition in bankruptcy, don't you?

A. I think we lived there longer than that; I do not know when we moved in there; I do not know about the time we went in there. I say the reason why the consideration named in this deed was such as it was, was because I did not care to have the consideration

(Testimony of James M. Hanley.)

known. I first talked about making this deed shortly before the transaction, the deed to the house.

Q. Was anything said about how the deed was to be made?

A. Do you mean in regard to whether the lots would be put in there?

Q. Yes.

A. Yes, sir. It was discussed. I would not have put them in there, but for the reason stated awhile ago. It was not stated just what should be put in.

Q. Now, as a matter of fact, your father and mother happened to be down at Colville, and they had that deed made, and you didn't know anything about it?

A. No, sir; it was talked over before they went down; my father was called to the jury, and had to go down there to get off; he had business to attend to, and he was going down to get excused, and that is when he had it made out.

Q. He had the deed made out very soon, and you didn't think it was going to be made out, did you?

A. I certainly did. I certainly did have that deed in my possession. I don't remember whether my father sent the deed down here to the County Auditor for record, or whether I did; we was busy at the time.

Q. You know that deed was recorded at his request, and he mailed it down here with a letter asking that it be recorded, did he?

A. He probably did. He did not have it in his possession all of the time. I turned it over to him at the time I had it sent down here; we was in a hurry; I was

(Testimony of John Zilka.)

working, and the morning before I went to the mill I got the deed and gave it to him. I said, "Send it down to Spokane and we will have it recorded." I had to go to the mill and get to work; I used to stay home nights. As a matter of fact, it was sent down by my father.

Q. He wrote a letter down to the Auditor, mailing the deed, asking that the deed be recorded, along about the 21st of July?

A. Somewhere about there. The deed had not been in the office there in a little safe all of that time; it was at home; I had it in my trunk at home. The deed was lost this summer in my baggage, the bank book and checks, and stuff I had in there was lost, too. As a matter of fact the deed was written by my father in his handwriting; that is, the blanks were filled in by him. I couldn't say whether the handwriting outside of that of my father was that of the notary public, Mr. Saxe. I know the body of the deed was in my father's handwriting.

Witness excused.

JOHN ZILKA, sworn on behalf of the defendant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is John Zilka. From about the 24th day of July, 1910, for the next two weeks, I was at Northport, Washington. I was put in charge of the plant by the sheriff, of Mr. Hanley's mill plant, by the sheriff of Stevens County. I was put there with reference to the levy of the attachment of the Crescent Lumber Company the latter part of July. The sheriff put me

(Testimony of John Zilka.)

in just about as soon as he made the attachment. I was about three weeks, from three to four weeks, in charge of the property continuously from that time. I was acquainted with Jim Hanley, this young man, at that time. During that three or four weeks while I was up there, he was there continuously; he was not right around the mill all the time, but what time he was not, he was in Northport.

Q. What is the fact about your having seen him in the town of Northport every day during the time you were in charge there?

A. In fact, I went to town pretty nearly every night, and every night I went to town I saw him on the street, or close to his home. Yes, I saw him every day about the mill during that time. I am willing to state that I saw him every day. He certainly was in Northport every day during that time.

CROSS-EXAMINATION.

The WITNESS: I went there in April, I could not just name the date this attachment was levied.

Q. April 10th. You were there continuously?

A. Yes, sir. I was not in charge of the books. I was running the mill. Millwright. At the time the sheriff made this levy I was put in charge as keeper, and it was my duty to be around the mill and look after the property. I was relieved the fore part of August, I should think the 15th or 18th, somewhere in there; I did not look up the date; I have got it in the time book. I was relieved by telegram; the sheriff notified me.

Q. How many times was John Hanley in Spokane

(Testimony of John W. Hanley.)

and back to Northport after the attachment was laid until you were relieved?

A. He went down the day after the attachment was served, and stayed down until he came up with a telegram.

Q. You say he stayed down here all of the time?

A. Yes, sir, until he came up with the telegram. I don't know, as a matter of fact, that he was at least twice back and forth between Northport and Spokane. I was over at the mill there all of the time. I came over to town in the evenings. I saw this young man every night when I came over, Jimmie. He was sometimes around the mill during the day; came up and talked to me. His father was up there some of the time. I could not swear whether John and his father were down in Spokane all of the time, but as near as I can understand, they were. I did not see them at Northport from the time I took charge as keeper, or rather the day after, until John came with this telegram from the sheriff.

Witness excused.

JOHN W. HANLEY, sworn on behalf of defendant, testified:

DIRECT EXAMINATION.

My name is John W. Hanley. I am a brother of the defendant James M. Hanley. I was present in court yesterday afternoon and heard all of the testimony. I was present at some of the conferences or conversations testified to by Mr. Kelly, Mr. Olson, Mr. Danson, Mr. Kizer and Mr. Lund. I was present from the time I

(Testimony of John W. Hanley.)

came down, the next day after the attachment was filed, and I stayed there until they thought they had things arranged, and they sent me back to ship out the lumber. I was present at all of those conferences, I think. They were held in different offices; some of them were in Mr. Lund's, and some in Graves' office, and in Danson's office, I think there were some in Danson's office. That is, I was present at all of the conferences testified to by those gentlemen mentioned on yesterday. My brother Jim, the defendant, was not there at any of them; he was at Northport. I did not hear at any of these conferences my father say, in substance, that this deed of these lots in question in this suit, to the defendant, was made for the purpose of bringing the Crescent Lumber Company to time. I never heard him make that assertion at all. I did not hear him say at any of those conferences, in substance, that he made that deed without receiving any pay for the property, or anything of that kind. I would have heard it if he had said anything of that kind, because I was right there, and as long as I was in town.

Q. How were you interested, if at all, in this matter?

A. Well, I had taken care of the books a whole lot, and as soon as I came down, I telegraphed the next day to my brother to have the books sent down, and the telegram was delayed some way, and the books did not get down until the day after, and I went down to the telegraph office. I had kept the books at the mill. I also had a substantial claim against my father. I don't know, at any of those conferences, that I heard my

(Testimony of John W. Hanley.)

father say anything about the transfer of the chattels and the horses and the outfit up there at Northport to one of us boys, or any explanation or discussion of that. I knew that my grandmother left Jim some money. I had heard her talk around the house there, and knew that she had some money.

Q. What do you know about her having had a considerable sum of money the last years of her life?

A. I knew that she had it; I never seen it; she kept it buried; she used to have a little bit in her trunk, that I know. When she was in the humor she used to give us a small amount. My brother and I lived with her in an old building, outside, back of our house; our house was kind of small, was not large, so Jim and I we lived with our folks; the house was papered and had a double floor in it, and there was a window and stove and everything in it; it was building paper that was used. I don't know just exactly the size of it; probably sixteen by twenty, or fourteen by eighteen, somewhere around there; I don't know exactly.

Q. As you heard family matters talked over, what was the understanding and talk, if anything, about grandma leaving something to Jimmie?

Mr. LUND: I object to that, as it would not have any bearing on this case.

Mr. BIRDSEYE: It tends to corroborate, and a matter of family talk.

The COURT: The question is very general; you may answer, however.

Plaintiff excepts and exception allowed.

(Testimony of John W. Hanley.)

The WITNESS: Jim always took care of grandmother, most of the time stayed with her; she was alone part of the time, you know; and built her fires and carried her wood, and looked after the chickens and everything, and while she was on her homestead, she had a cow there, and he used to help her with the cow and everything, and she always said when she would die she would certainly leave something to Jim. In the latter years of her life, grandmother was rather a peculiar old lady; everybody remarked about that; I would often talk with the boys around the school; they used to make fun of her, that is, in a way, you know, she was peculiar and kind of a queer old lady.

Q. What is the fact as to her being secretive and miserly?

A. Well, she was rather close and saving. I know that my mother turned this money over to Jim after grandma's death, when he was twenty-one, that is what she told him, and what he did with it, of course, I don't know; I know there was talk about his going to buy those lots over here, by my father. I don't know anything about the eventual payment of the money or the execution of the deed, and was not present when the money was paid. I was not present when the deed was delivered to Jim; I seen the deed afterwards; I know he had it up north with him this summer, with his bank book and things, checks and stuff, in the Northport bank, and his clothes, and everything was stolen in his suitcase, suitcase and all, up in Grand Forks. I saw this deed in Jimmie's possession after the 2d of May, 1910;

(Testimony of John W. Hanley.)

I know that he had it, know that he had it up until this summer, sometime this fall.

Q. What conversation did you ever hear between your father and James about his purchase of these lots from your father?

Mr. LUND: I object to that, if the Court please.

The COURT: Answer the question "yes" or "no."

Plaintiff excepts and exception allowed.

The WITNESS: Yes, sir. I heard such discussion several years ago; I don't remember how far back it was. My father wanted my brother and I to invest some money in these lots in there, I think before he bought in, said he thought it was a good place for a lumber yard, and that the property would increase, would be pretty good so I know James came down here and was going to form a corporation, and Kelly backed out, would not fix it that way. I don't remember just exactly when that was; it was along about the 2d of May, 1910, or shortly prior thereto, that I heard such conversation. It was that my father did not have any ready cash, and so Jim had this money, and he kind of wanted those lots, and told him if he would make some deal on them, he would take them and pay him his money. I heard the terms of the deed discussed, the amount to be paid was fifteen hundred dollars. Along about the 2d of May, 1910, my connection with the business was, I took care of the books all of the time.

Q. Do you know whether your father at that time received or put into the business any additional money?

(Testimony of John W. Hanley.)

A. Well, the books, I told you, was kept in an—they was not no up to date set of books; they will show that, as far as that is concerned. I know, of my own knowledge, that he paid some of this fifteen hundred dollars to his creditors connected with this business. He paid some to S. N. Turner; it was some three hundred and seventy-five dollars; somewhere around there, I think. I know where that money came from. I know I always checked up his bank books when they came back, and I know he never paid it with no check. It was not paid, then, in the ordinary course of payment, that payment had not been made before. The first idea or hint that I had that my father was in financial difficulty which might lead to his insolvency was not until this Crescent Lumber Company started trouble, started attaching everything, the latter part of July, 1910; there was nothing said about that, or anything that would make a man think that before that. The condition of my father's finances on the 2d of May, 1910, and my father's business, in brief, was, we were planning on going right ahead and installing a boiler to get the power and had one million and a half or two million feet of logs on the opposite bank, all cut, and hauled in, and had quite a stock of lumber there to saw up, and a good planing mill, and everything in good shape. I was keeping the books at that time and was familiar with the business. I had no reason to, and did not apprehend any financial embarrassment or trouble. We figured we could work it out, if we were let go ahead with it. The bank was not in any way pressing for payment of this

(Testimony of John W. Hanley.)

debt to the bank; they wrote a couple of letters, though, and said the drafts—the last, you know, along about July—said they could not cash any large checks, but up to that time there had not been no—. I know from the 2d of May we drew considerably from that time on, probably three or four thousand dollars; something like that. When the Crescent Lumber Company attached, I think we was loading on four cars, four or five, ready to ship to the Crescent Lumber Company; I would not be positive now of the number. Prior to that attachment, on the 24th of July, 1910, none of my father's other creditors had been pressing their claims. The condition of his business was, it was good.

CROSS-EXAMINATION.

The WITNESS: I was present, as I say, in your (Mr. Lund's) office, at the time when Mr. Danson and my father and Mr. Kizer and Mr. Moore were there, and Mr. Kelly and Mr. Olson. I knew all of those people. I never heard my father say on that occasion, in response to a question, that he had made these conveyances for the purpose of bringing the Crescent Lumber Company to terms. I was sitting right there in the room, so that I heard everything that was going on. No, I don't remember either that the question came up as to why he did not make some conveyances to me. It was not stated that I was married and had trouble with my wife, and were not living together, and that was the reason I could not take the title. I was married, yes.

(Testimony of John W. Hanley.)

Mr. BIRDSEYE: We object to prying into domestic difficulties with this witness.

The COURT: You can ask him about anything that transpired there; not about his domestic affairs outside of that.

Mr. BIRDSEYE: Was not this at the referee's hearing that you refer to now?

Mr. LUND: No.

The WITNESS: I say that no such talk or conversation occurred at that time, it certainly did not.

Q. Now, were you at that conference; when we adjourned we adjourned because we did not have a statement of the indebtedness, didn't we?

A. I remember something about the indebtedness.

Q. We could not do very much arriving at any conclusion until we knew exactly the status of what your father's indebtedness was?

A. I think Will Irish suggested to me, I think it was Will, I would not be positive, the cashier of the bank, to go to Northport and get the books.

Q. You promised to make and procure us a statement showing the exact amount of your father's indebtedness, didn't you?

A. No, I told you I could not get the exact amount when they had the books there, because they did not send all of them; some had accounts, and I told you I could not give you the exact amount, but would give it approximately; I knew all the indebtedness, excepting our wages. I don't believe I did give that assumption; I might have, but I would not be positive. I say that

(Testimony of E. C. Pratt.)

I saw Jim with this money; I saw it when it was given to him; I never knew what he done with it. I saw it handed over to him. I was in the house at the time. I never asked him where he kept it.

Q. From that time on, did you ever ask him a single question about what he had done with it?

A. I did not consider it was my business.

Q. Did he ever bring up the question from the time he was twenty-one years old, until this time?

A. We might have talked about what he was going to invest it in, or something like that. I never asked him where he kept it.

Q. Did you talk with him about it at all?

A. In that way, I might have, yes sir.

Q. You might have. Do you know whether you did or not?

A. Well, yes. He talked about investing this money in these lots, some of it. I never tried to borrow any money from him; did not have to. I never advised him to invest it in anything. I told him I thought it would be all right, though.

Q. Anything else?

A. No, sir. I did not advise him to put it in the bank and get a little interest on it.

Witness excused.

E. C. PRATT, sworn on behalf of defendant, testified:

DIRECT EXAMINATION.

The WITNESS: My name is E. C. Pratt; I have lived in Spokane County twenty-four years this coming

(Testimony of E. C. Pratt.)

spring, I believe. I now reside at Milan. I am a brother of former Mayor C. S. Pratt of this city. I lived near the Hanleys while they were living in the north part of the county; they were in the same section that I was on. I lived near to them, probably about twelve years, ten or twelve years, I would not say which. I knew Mr. Hanley's mother, Mrs. Julia Hanley, at that time. I met her at first, I think it was in 1888, in the spring, I think it was, in the last days of March. I knew her from that time on, not until her death; I knew her up to the time she went to Deer Park. I don't know how long it was before she died; I presume it was a couple of years, yes, maybe three. I would see her during that time, sometimes I would see her every day; I was logging, you know, across our land in going across from my land, I would come across hers. She was at my house at one time and she was hurt at one time, stayed at our house about a couple of weeks; had a limb broken or put out of joint.

Q. What was the fact as to her being a little eccentric or peculiar, secretive person?

A. She was a kind of peculiar old lady, you would meet her say today she would be very jolly and tomorrow she would meet you with a club. That was the peculiarity of it. I don't know very much about her being secretive or miserly. I know the old lady had some money. I know it because I saw her have money. She carried the money in—I don't know—it was a little pouch she carried about here (illustrating neck) and the string went around her neck. She carried it inside

(Testimony of E. C. Pratt.)

of her clothing. I have seen her have quite a little money. I don't know how much; I never counted it; I would think there was several hundred dollars, but I can't swear to the amount, because I did not count it; she had gold and silver, both. I don't know where she kept her money. I said to her one time, "You are careless, grandma, in carrying you money, so much around you." She said, "I don't carry all of my money; I have a place for it." She said she didn't carry all of it, she had a place for it. She did not say what that place was.

Q. Did you ever hear her say, or did you know of any particular amount of money that she had during that time?

A. She told me she had twenty-five hundred dollars. I think that was, if I remember right, in about 1891 or '92, somewhere along there; it might have been 1892. No, I don't know when she died; I have not got the date.

The COURT: 1904

The WITNESS: 1904, I could not say.

The old lady paid me an indebtedness that she owed me; she paid us for taking care of her at the time she was hurt; we went and got her and took her to our home and took care of her while Mr. Hanley was away in town here, him and his wife. That was the time she was on her homestead and I was on the next section. James P. Hanley, the Hanley's, were living at that time here in Spokane, I think it was, I don't know whether here or at the stone quarry, I am not sure

(Testimony of E. C. Pratt.)

which, but he was away from home, I know that. He never paid any of her bills to me that she owed me.

Q. Did you ever hear her say anything about leaving any money to her grandson, James Hanley?

A. The little fellow was always with her, that is, most always, and she said when she was through with this life that Jim was going to get her money. It was mostly believed she had some money; everybody believed she had money.

Q. "Everybody believed it." How do you know that?

A. Because neighbors that I talked with supposed she had money; they talked in that way. I don't know anything about the old lady selling her homestead up there. I only know about her selling a part of the timber; she sold some of it to the Chattaroy Lumber Company; I don't know whether she sold any considerable part; I don't think she sold a great part of it, not at that time.

Q. Would you know the value of her homestead at the time it was disposed of, both land and timber

Mr. LUND: If he knows what it was sold for that would be the best evidence.

Mr. BIRDSEYE: He lived there twenty-four years; he may know the value.

The COURT: If he knows what it sold for, that would be the best evidence.

The WITNESS: I do not know what it sold for. There is all kinds of prices on that kind of land in that locality; of course, it would have to be an estimate made

(Testimony of E. C. Pratt.)

of what the timber was worth, to get at the real value of it. I don't know how much timber there was on it at the time it was sold.

CROSS-EXAMINATION.

The WITNESS: As a matter of fact, I and Mr. Atwood located the Hanleys on their homesteads. Mrs. Hanley's homestead, they contested somebody else on there; they contested a man by the name of Cole; I think he had a pre-emption, either he or his wife; they never appeared at the trial; in those days both timber and land were very cheap; I could not say as it sold for along about fifty cents and a dollar an acre, but it was all homestead, you know; there were no sales made there at that time. At the time this land was sold by Mr. Hanley, I don't know when it was. I lived at that time at Milan. I moved away from there, about four miles, four or five. The time I had the talk with Mrs. Hanley about her money was at the time she was hurt; you know she was at our place about two or three weeks. I believe it was a couple of years after she located on the homestead. She had not made proof at that time, not at the time she was hurt.

Q. And at that time she told you that she had some money

A. She told me that several times, yes, that Jimmie was to get her money because he stayed with her. She did not say anything about Katherine going to get some of her money; did not say anything about Katherine.

Q. Didn't say in express words that she was going to leave it equally to those children?

(Testimony of E. C. Pratt.)

A. I never heard anything about Katherine at all. She said Jimmie was going to get her property. The last time I saw the old lady, if I remember right, was in 1901 or 1902. I was cutting hay for him at that time. She told me that Jimmie was to have her money; I was cutting hay for J. P. Hanley, I think that was, if I remember right, that was the last time I ever met her; they were living on the ranch, on Mrs. Hanley's forty.

Q. Did I understand that was in 1901?

A. Seems to me it was in 1900 or 1901. She did not at that time tell me how much she had.

REDIRECT EXAMINATION.

Q. You don't mean 1901, instead of 1891

A. The last time I saw her, I said I think was in 1901.

Q. About how many years ago, now. I understood you to give that at one time as 1901 and another time it was 1891, which was ten years prior?

A. I made two different remarks. The last time I saw Grandma Hanley was in 1901, about two years before her death; that was the last time I saw her.

The COURT: How much money did you say you saw?

A. Saw her have?

The COURT: Q. Yes.

A. I don't think I made the statement how much she had, but she had quite a lot of money, but I never stated how much, because I never counted it. I said it looked to be several hundred dollars.

(Testimony of E. C. Pratt.)

RECROSS-EXAMINATION.

The money that I saw her have was in this sack that she was carrying upon her neck.

REDIRECT EXAMINATION.

When I remonstrated with her for carrying so much money, she said, "I am not carrying all my money with me." She said she had a place for it.

RECROSS-EXAMINATION.

That was when she was living in her little shanty on the homestead; about the time that she proved up, some time about there. We located her there in November, I think, 1888.

Q. This would be probably along about 1890, then, something like fourteen years before her death?

A. 1892 or 1893, maybe, I was logging through there at the time; it must have been at least ten or twelve years before her death, somewhere along there.

REDIRECT EXAMINATION.

The WITNESS: Yes, her homestead, I think, was sold—yes, I know it was sold. I could not say when it was disposed of; there was considerable timber on it, on her homestead; she had a good claim, but I can't give you any idea when the home claim was disposed of.

Q. But it was after this time that you saw her have the money, and saw her have several hundred dollars?

A. No, it was before she sold it. I saw that money before she sold it. She was a woman that lived as well as other people; she did not throw her money away; she was not foolish. She had a couple of cows at one

(Testimony of Katherine Hanley.)

time and she had chickens and lived, I suppose, as people live in the country.

Witness excused.

KATHERINE HANLEY, recalled on behalf of defendant, testified:

DIRECT EXAMINATION.

The WITNESS: I was sworn yesterday. From the time the Crescent Lumber Company attached my husband's property on the 24th of July, 1910, and for the next two or three months, I lived in the town of Northport, in the state of Washington. I could not tell exactly how long I stayed there and lived there with my family after that attachment; I think I came down, I was here, I won't say for sure, whether it was a week or two weeks, the last of July. I could not exactly tell you how long before my husband went into bankruptcy on the 25th or 26th of August, 1910, he moved the family to Spokane; a few days before that.

Q. Then you must have stayed up there at Northport from the time of the attachment until somewhere the middle of August, you say?

Mr. LUND: That is argumentative; if she knows, let her state.

Mr. BIRDSEYE: I am trying to get her straightened out.

The WITNESS: Refreshing my recollection from those circumstances, it was the last of August that we moved to Spokane. We lived at Northport from the time of the attachment up to that time. My son James was living at home during that time.

(Testimony of Katherine Hanley.)

Q. Now, you may tell the Court whether or not you saw him daily in Northport, how much of that time.

A. He was there until he came down here, I think in September or the last of August, I won't say for sure, he stayed at home, he stayed at home and boarded right at home with me, and took his meals right there, from the time of the attachment until the time that I came to Spokane. He was in Spokane the Fourth of July and came back, if I am not mistaken, on the 7th, and he did not come in any more until the last of August or first of September, to my knowledge; he was right at home in Northport; I saw him there every day; there were a number of young folks out every evening for a week or so in his gasoline launch on the river.

CROSS-EXAMINATION.

I came down the latter part of August; I won't say just what day it was, because I don't remember. I don't remember whether I came down between the time the attachment was made in July, until I came down finally in August. I was not down here in conversation with my husband about making a mortgage on my home place, to my knowledge; I might have come down in August.

Q. You talked about that matter, and you refused to join with him in a mortgage on the property out there in Lidgerwood, didn't you?

A. Well, that was the last of August, to my knowledge, or July, the last of July. I was here at that time, the last of July, the latter part of July.

(Testimony of Katherine Hanley.)

Q. Or the first part of August, the first days of August.

A. Well, I disremember, but I came down in the middle of August. I was here for a number of days and then went back again.

Q. Were you not advised that in order to claim this property as exempt, as a homestead, it would be necessary for you——

A. (Interrupting) This was my own separate property, I put my own money into this property.

Q. You had deeded it to your daughter Katherine?

A. On account of this tax title lot, my friend told me in Northport, perhaps if I would deed this over to my daughter and have it transferred back, it would make it stronger for me. Some friends of mine up there told me that. That was not exactly why it was done. I did it because I thought, being a tax title, it would be stronger for me.

Q. It was done at your suggestion, was it?

Mr. BIRDSEYE: I object to this; it is not in this suit.

The COURT: I don't think it is material.

Plaintiff excepts and exception allowed.

Q. You came down, Mrs. Hanley, after Mr. Birdseye had charge of your affairs, and got a notary public to deed that property back to you?

A. Not to my knowledge; not that I remember of.

Q. And you were advised that you had to keep it as a homestead in order to claim it, and that is why you moved down?

(Testimony of James P. Hanley.)

A. I came to the office and asked Messrs. Broberg & Schuler to vacate a month before; the folks that were living in those houses, their house was not finished, they were building their own home and were going to move out as soon as they could, and they were delayed two weeks, later on account of their barn not being built.

REDIRECT EXAMINATION.

Q. Then you had been planning for a month to take possession of your place in Spokane?

A. Yes, sir; I wanted to come in and send my children to school.

I moved down to Spokane somewhere about the last of August. When the Crescent Lumber Company attached Mr. Hanley I was still living in Northport. During the time of my living at Northport, between the time of the attachment and my moving down here with my family in the middle of August I came down on a trip to Spokane and back once, to my knowledge; I think that was about two weeks or three weeks after the attachment; a week, to my knowledge. I was down here in Spokane at that time just a few days; I don't remember just how many days; I don't think it was over three days. During that time my son Jimmie was with my daughter. I left him at home and found him at home when I got back.

JAMES P. HANLEY, recalled in rebuttal, testified:

DIRECT EXAMINATION.

The WITNESS: I heard the testimony in this case yesterday afternoon, of Mr. Olson, Mr. Kelly, Mr.

(Testimony of James P. Hanley.)

Kizer, Mr. Danson and Mr. Lund. I was present at all of those conferences they referred to, but the last one, and the last conference they had Mr. Danson would not allow me or John W. Hanley to go to it. My son James was not present at any of those conferences; he was at Northport all the time. Of my family, Johnnie was at every one of those conferences, and myself, all but the last one.

Q. What is the fact about your having said at any of those conferences in substance or effect that you conveyed this property to your son for the purpose of bringing the Crescent Lumber Company to time?

A. No, sir, there was nothing of the kind ever said. The only thing that was said about the lots, they asked me the reason that I bought them in such a position, leaving the two vacant lots in the center. I told them it was on account of later on, if I wanted to buy the other lots, to make the lumber yard, that I could be sure of getting them. They said that was a "Yankee trick." Somebody made that remark. There was no discussion; I never said a word about conveying them to make the Crescent Lumber Company come to time. I never said at any of those conferences, in substance or effect, that I had conveyed those lots to my son James without any consideration or price paid. There was not anything of that sort up. There was nothing said in regard to conveying them without any consideration at all. They talked about the personal property, the horses. They asked about that, if it was conveyed without any consideration. I told them no, there was a

(Testimony of James P. Hanley.)

dollar paid both from Jim and from Turner. I never at any time or place, in substance or effect, said that I had deeded this property to Jimmie to bring the Crescent Lumber Company to time, or that I deeded it to him without consideration.

Q. Mr. Hanley, what is the fact about its being understood and talked in those conferences that your son had those lots, owned them, and had the title to them, and further——

Mr. LUND: I think that calls for a conversation at a particular time.

The COURT: There is only testimony given here to one conversation, a certain statement made.

Mr. BIRDSEYE: He talked about an agreement and proposed mortgage.

Q. What was said by anybody interested at those conferences about your son James joining in a mortgage on those lots, to enable you to go on with your business.

A. Well, in the conferences that were held when Mr. Danson was my attorney, he told me not to say a word. He said, "When we go to hold a conference, don't you open your mouth," he says, "I will do all of the talking." I told him, I says, "Jim is willing and John is willing to relinquish all claim to their wages until the debt is wiped out, and Jim will give a mortgage on the lots as security," I mean on those four lots in Northeast Addition to Ross Park, that he had, and I told Mr. Danson, I says, "I have no authority, and I can't get my wife to give security on her home," even at this last

(Testimony of James P. Hanley.)

conference that Mr. Danson had with Mr. Lund and those parties, he would not let me or my son John go over to the conference; he made us sit in his office, and he goes over and makes the deal with those people, and gives them a blanket mortgage on all of the property, including the homestead, and when he came back to the office and told me what he had done, I told him, I said, "Mr. Danson, you had no authority from me to do that, because I can't get her consent." Then he got mad and jumped up and said, "I won't have no more to do with the case." That is the circumstances of it right there; he never allowed us at the last conference at all; he wanted to fix the thing up with those people himself. He acted as my attorney no longer after that. Then I went to Post, Avery & Higgins, and told Mr. Post the circumstances——

The COURT: That has nothing to do with this case. You better answer the questions propounded to you.

The WITNESS: Mr. Post says to me, "Who is the bank's attorney?" I says, "Mr. Lund." He says, "Ain't the bank friendly to you?" I says, "Certainly." He said, "What is the matter with having Mr. Lund take care of your case with the bank " So the idea had never struck me before; so I said, "I think it will be all right." So I went over to Mr. Lund and turned over the papers to him, and asked him if he would act as my attorney in conjunction with the bank, and he kept the papers until he made out the statement. He made out some kind of a statement for all of us to sign, and to sign over a mortgage, give them a mortgage then

(Testimony of James P. Hanley.)

on everything. I was sick in the morning and just about ten minutes before train time he had to finish, and I did not have time to have read it over, and I took it to Northport, and after I read it over to the boys they refused to have anything more to do with it. I saw there was no chance; he wanted to get hold of everything, and get me to work up the balance of the logs, and turn me out naked. I could not say how long he had my papers; he had them until I refused—until I had to go into bankruptcy.

Q. What did Mr. Lund say, if anything, when you went to him with this request that he protect your interest in the matter?

A. He said it would be all right.

CROSS-EXAMINATION.

The WITNESS: I brought you all of the papers concerned in the Crescent Lumber Company attachment, and also the logs that the other people had attached up there, that injunction; they were the papers concerning our business with the Crescent Lumber Company. You (Mr. Lund) ought to know what kind of papers they were; you had them and looked them over.

Q. No, I am asking you; you ought to know; you said you delivered them. What were they?

A. I can't tell you exactly now. They were regarding the business and the transactions between me and the Crescent Lumber Company; that is the only papers that I should have there. I remember a summons and complaint, and an amount that was owed them, and all

(Testimony of James P. Hanley.)

of those details. I have reference now to some injunction suit that was brought by the lumber company up there, to prevent the moving of some logs from their land. You (Mr. Lund) had those papers also. I brought those papers there and left them; I brought them all over.

Q. You say that after we had that meeting up there at my (Mr. Lund's) office, when I mentioned to Mr. Danson the fact that you had made these conveyances, that you made no statement as to the reason why you had made them?

A. Made which conveyances?

Q. Those deeds and this bill of sale of the horses?

A. I don't know which conferences you are talking about.

Q. In my (Mr. Lund's) office.

A. We held two or three in your office.

Q. At the time that Mr. Danson was there with you, Mr. Kizer, Mr. Moore, Mr. Olson and Kelly; you remember of being there, don't you?

A. I was there several times.

Q. Do you remember my stating to Mr. Danson there, in open meeting, that you had made these transfers?

A. Why, everybody knew I had made the transfers.

Q. No, just pay attention to my question. You remember my saying to Mr. Danson there in open meeting that you had made these transfers?

A. No, sir, I do not remember your saying anything.

(Testimony of John W. Hanley.)

Q. And you did not state at that time that you had made these conveyances for the purpose of bringing the Crescent Lumber Company to terms?

A. Which conveyances are you talking about, or what conveyances are you talking about now?

Q. Did you make any such statement at any time?

A. Were you talking about the conveyances of the personal property, the horses. You recalled yesterday on the stand that you were.

Q. I wish you would answer my question, and then we will get along a good deal better.

A. I want to know what your question is.

Q. Did you make any statement about having made the transfer to bring the Crescent Lumber Company to time?

A. No, sir.

Q. Never used that language, in substance or effect?

A. No sir, not with reference to these lots.

Q. Did you in reference to anything else?

A. Might about the——

Q. Did you make the statement there in that meeting that you had made the transfer of that personal property for the purpose of bringing the Crescent Lumber Company to time?

A. Yes, sir; that was the personal property, not the lots. I made that statement, and that was in reference to the personal property.

JOHN W. HANLEY, recalled in rebuttal, testified:

(Testimony of John W. Hanley.)

DIRECT EXAMINATION.

The WITNESS: I was present with my father at the time that he went to Mr. Lund's office, that he has just testified to. My father was explaining to Mr. Lund, told him he thought they could fix it up all right in some way, and take care of the papers; he was taking care of them for the bank, and he thought that he could make some arrangement in some way, and also explained to him about the logs and stuff, that there was an injunction served on us at Northport.

Q. What is the fact about your father asking him to protect his interest in the matter and look after it?

A. He asked him and told him, and Mr. Lund thought it would be all right. I can't remember the exact words, but he told him he was acting attorney for the bank, and thought he could look after his interest, too. My father took all of the papers there, and left them there; he left them there until they fixed up this agreement, and he told them to leave out—my father would not sign no mortgage for our home, and he left them there until that time, until they fixed this agreement, with the home and everything else, and then he told them they could not do anything with it; he told them any other way, or any terms, or anything would be satisfactory outside of that.

CROSS-EXAMINATION.

Q. You knew that your father had made an agreement that they would execute those papers, and I (Mr. Lund) told him that after that agreement was made that I was in position, or would be, to represent him in

(Testimony of John W. Hanley.)

that injunction suit, if the thing was carried out; is not that a fact?

A. In the injunction suit, yes, and also in these other matters.

Q. We had already at that time come to an agreement; it was just a matter of concluding it, and you were to go up to Northport, weren't you, to ship those four cars of lumber?

A. The agreement had not been signed; he had not read it over.

Q. He had agreed to it orally down here, as to what should be done?

A. He had agreed orally, yes, but not to put the home in. So they went in and held a conference, and Mr. Danson told him not to stay in the office and came back and said, "I have got everything all fixed up," he says—when he mentioned about having the home in, he said especially, "I told you any arrangement outside of that would be all right; the boys are willing to release their claim until such time as it is paid out, and Jim will also give a mortgage on these lots, but my mother won't involve her home in the matter at all." So that Mr. Danson came back and said the home is——

Q. (Interrupting) He had already made an agreement to give a mortgage on these four lots?

A. He had already?

Q. Yes, sir; you say he agreed to that, did he?

A. He said he thought that he could get James to give a mortgage on the lots and release our wages, and everything would be put in excepting the home, my

(Testimony of John W. Hanley.)

mother would not sign up for her home. Mr. Danson goes over and has everything arranged and puts the home in and comes back, and my father says, "There is nothing doing; "she won't sign that that way; she refuses to sign that with her home put in." So Mr. Danson says, "I am through with it."

Witness excused.

Thereupon the parties closed their evidence and proceeded to argue the matter to the Court.

No. -----.

In the District Court of the United States for the Eastern District of Washington.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,
Complainant,

vs.

JAMES M. HANLEY,

Defendant.

I, Frank H. Rudkin, Judge of the above entitled Court, hereby certify that the foregoing is a true and correct statement of all of the evidence in the above entitled cause taken in open Court, pursuant to oral stipulation of the parties, and the same, together with the exhibits introduced and received in evidence, is the evidence upon which the final judgment herein is based.

(Signed) FRANK H. RUDKIN,

Judge.

Endorsements: Record of testimony taken at trial
and Certificate of District Judge.

Filed August 2, 1912.

W. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

DEFENDANT'S EXHIBIT "A."

Northport, Wash., March 16th, 10.

The following is a true statement of my financial condition as near as I can get it:

North Port Sawmill Building & Machinery--	25,000
Northport Planing Mill & Machinery-----	3,800
Part of Lots 1, 2, & 3S 34 & 40 Range 40 about 15 acres -----	5,000
½ interest in Steamer Columbia of Northport	2,5000
Cook house and bunk houses and barns at mill -----	800
2 million one hundred thousand feet of saw logs -----	14,700
Fourteen hundred thousand feet of lumber in pile, avg. 17 per M-----	23,800.
Deer Park Sawmill -----	2,300
9 head of horses av \$150 apiece-----	1,350
9 " " oxen \$100 " -----	900
6 logging trucks -----	450
5 sets harness -----	185
Cant hooks chains and logging rigging----	200
4 logging sleighs and 4 logging drays-----	260
Bank stock -----	100
Due from Bradford and Kennedy-----	3,610.25
Due from C. J. Sutton secured by Lein-----	108

due from Sale of Lot 13 B 127 Lidgerwood Park -----	600
lots 5, 7, 16 and 18 Block 7, NE Addition to Ross Park -----	2,000
Due from Stewart and Welsh R R Con- tractors -----	500
Cash in Bank -----	300
Lot 17 block 126 Lidgerwood Park Spokane, Katherine Hanley -----	4,000
Equity in 800,000 ft standing timber-----	1,200
	<hr/>
	\$93,663.25
Insurance on Lumber -----	19,000
Insurance on Dwelling Lot 17 blk 126 Lidger- wood Pk. -----	3,400
Life Insurance -----	3,000
Alpication in for Life Insurance for-----	2,000
Insurance on Steam Boat Columbia-----	2,000
	<hr/>
	\$29,400

Liabilities

First State Bank of Deer Park, Washington about -----	24,000
Crescent Lumber of Kansas City Mo. about	11,000
McGowan Bros, of Spokane-----	100
Marshal Wells & Co. Spokane about-----	200
H. Peters 1219 First Ave about-----	100
Jensen King & Bird Spokane about-----	75
Washington Machinery and Supply Co, Spo- kane, open acct, about-----	575

Wash. Mach. Sup. Co. on note-----	600
Farmer's Co-operative Co. Northport-----	400

\$37,050

Endorsements: Defendant's Exhibit "A."

Filed Jan. 3rd, 1912.

W. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

EXHIBIT -----

THIS INDENTURE, Made this second day of May, in the year of our Lord one thousand nineteen hundred and ten, between James P. Hanley and Katherine Hanley, his wife, the parties of the first part, and James M. Hanley, the party of the second part.

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Five dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain sell and convey unto the said party of the second part, his heirs, and assigns forever all lots, tract or parcel of land lying and being in the County of Spokane and State of Washington and described as follows, to wit: Lot 5, lot 7 and lot 16 and lot 18, block No. 7 N. E. Add. to Ross Park Spokane, Washington.

TO HAVE AND TO HOLD THE SAME together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part his heirs and assigns forever. And the said parties of the first part for their heirs, exec-

utors and administrators, do covenant with the said party of the second part his heirs and assigns that they are well seized in fee of the lands and premises aforesaid and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances.

And the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part will warrant and defend.

IN TESTIMONY WHEREOF the said parties of the first part have hereunto set their hand and seal the day and year first above written.

JAMES P HANLEY (Seal)

KATHERINE HANLEY (Seal)

Signed, sealed and delivered

in the presence of

W. L. SAX.

STATE OF WASHINGTON,

County of Stevens—ss.

I, W. L. Sax, a Notary Public in and for said county and state do hereby certify that on this 2nd day of May A. D. 1910 personally appeared before me James P. Hanley and his wife, Katherine Hanley to me known to be the individuals described in and who executed the within instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

(Signed) W. L. SAX,

Notary Public, Residing at Colville, Wash.

W. L. Sax

Notary Public

State of Wash.

Feb 16, 1914

STATE OF WASHINGTON,

County of Spokane—ss.

I, R. W. Butler, County Auditor in and for the County of Spokane, State of Washington do hereby certify that the above and foregoing Warranty deed, numbered 289192, James P. Hanley and Katherine Hanley to James M. Hanley, filed in this office on July 18th A. D. 1910, at 50 minutes past twelve o'clock in the afternoon as appears of record in book 264 of deeds on page 604 thereof, records of this office..

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of Spokane this January 4th, 1912.

(Signed) R. W. BUTLER, *County Auditor.*

INDORSEMENTS.

Number 289192
WARRANTY DEED.

James P. Hanley et ux

to

James M. Hanley

STATE OF WASHINGTON,

County of Spokane—ss.

I hereby certify that the within instrument was filed for record in the office of the County Auditor of said County on the 18th day of July A. D. 1910 at 12 o'clock and 50 minutes P. M. at the request of J. P. Hanley and recorded on page 604 of book 264 of deeds.

R. W. BUTLER, *County Auditor.*

(Signed) By F. M. HEYWOOD, *Deputy.*

Recorded on July 21, 1910.

By JOHN H. PUGH, *Deputy.*

Mail Req.

Northport, Wash.

Endorsements: Exhibit -----

Filed January 3rd, 1912.

W. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

EXHIBIT -----

*In the Superior Court of the State of Washington for
Spokane County.*

SUMMONS.

T. B. MOORE, and THEO. C. SHERWOOD, Co-
partners doing business as Crescent Lumber Com-
pany,

Plaintiffs,

vs.

JAMES P. HANLEY and KATHERINE HANLEY,
Husband and Wife,

Defendants.

THE STATE OF WASHINGTON to James P.
Hanley and Katherine Hanley, husband and wife, the
above named defendants:

You, and each of you, are hereby summoned to ap-
pear within twenty days after the service of this sum-
mons upon you, exclusive of the day of service, and de-
fend the above entitled action in the court aforesaid, and
answer the complaint of plaintiffs and serve a copy of
your answer on the persons whose names are subscribed
hereto, at Spokane, Spokane County, Washington, and
in case of your failure so to do, judgment will be ren-
dered against you according to the demands of the
complaint, which will be filed with the clerk of the said
court, a copy of which is herewith served upon you.

Dated this 21st day of July, 1910.

(Signed) GRAVES, KIZER AND GRAVES,

Attorneys for Plaintiffs.

P. O. Address, 400 Fernwell Building, Spokane, Wash.

*In the Superior Court of the State of Washington for
Spokane County.*

COMPLAINT.

T. B. MOORE, and THEO. C. SHERWOOD, Co-
partners doing business as the Crescent Lumber
Company,

Plaintiffs,

vs.

JAMES P. HANLEY and KATHERINE HANLEY,
Husband and Wife,

Defendants.

Plaintiffs allege:

I.

Plaintiffs T. B. Moore and Theo. C. Sherwood are and at all times herein mentioned they were co-partners doing business under the firm name and style of Crescent Lumber Company and engaged in the business of selling lumber at wholesale in Kansas City, Jackson County, Missouri.

II.

Defendants James P. Hanley and Katherine Hanley now are and at all times herein mentioned they were husband and wife, and at all times herein mentioned the said defendant James P. Hanley was and he now is engaged in the manufacture of lumber in the State of Washington.

III.

On the 16th day of March, 1909, the plaintiffs and the defendants made and entered into a certain written contract, a true and correct copy of which said contract is as follows, to-wit:

CONTRACT.

WHEREAS, The Crescent Lumber Company, a co-partnership composed of T. B. Moore and Theo. C. Sherwood, engaged in the business of selling lumber at wholesale in Kansas City, Jackson County, Missouri, under the firm name of Crescent Lumber Company, hereinafter to be called the Crescent Lumber Company, and J. P. Hanley, engaged in the manufacture of lumber at Northport, Washington (Stevens County), being desirous of making arrangements for the conduct of their business that will be of mutual interest and benefit, do hereby each in consideration of the promises of the other herein contained, mutually agree each with the other as follows:

FIRST: The Crescent Lumber Company agrees to lease to J. P. Hanley, his worked lumber sheds, rough dry sheds and lumber yard as now located at Northport, Washington, including the foundations for the lumber piles, paying for the same at the rate of One Hundred Dollars (\$100.00) per annum.

SECOND: The Crescent Lumber Company will purchase of J. P. Hanley at Seven Dollars (\$7.00) per thousand feet in the rough and in pile six hundred thousand (600,000) feet of rough lumber per month from March 1, 1909, and pay for same on or before the 10th of the following month for this amount if cut the previous month, and if this amount is not cut, will pay for whatever is cut, it being understood that when payments for lumber are made the Crescent Lumber Company shall receive bill of sale for amount purchased, based on a certified stock sheet to be furnished them.

Said purchase to amount to not more than two and one-half (2,500,000) feet in sheds and on the yard at any one time, unless otherwise agreed to meet some situation not now obvious.

THIRD: The Crescent Company will pay to J. P. Hanley for taking from the rough piles and rough sheds and manufacturing it in their planing mill and loading it upon cars, on order of and as directed by the Crescent Company, all that they shall receive from sales for said lumber, over and above the cost of same per thousand feet after deducting the lease money, cost of insurance, taxes, interest on the money invested in the stock of lumber at eight per cent (8%) per annum, computed each time a shipping settlement is made, two per cent (2%) trade discount and ten per cent (10%) on the net amount received for the lumber; that is, 10% on the amount received for the lumber less the freight charges, claim for shortages, under grades, interest and trade discount heretofore mentioned, etc. Said payments shall be as follows: Eighty per cent (80%) of estimated net amount less cost of rough lumber and full settlement to be made on the 10th of each month for the preceding month's shipments, for all shipments on which freight bills shall have been received from customer. By "estimated net" is meant the amount arrived at after deducting freight charges from invoice price to customer, using weights established by the lumber associations for the different classes of lumber. It being understood that any loss through bad accounts or customers' failure to pay for lumber purchased shall not be chargeable to cost of lumber or affect the amount

paid J. P. Hanley for milling, it also being understood monthly settlements to J. P. Hanley shall be certified by the Crescent Company, if desired by J. P. Hanley.

FOURTH: The Crescent Lumber Company is to keep J. P. Hanley supplied with orders for lumber to be manufactured in order that they may keep their planing mill running as steadily as possible. As soon as rough lumber is in condition for shipment and continue so to do at best market prices obtainable, whenever there is lumber suitable for shipping and market prices are satisfactory.

FIFTH: J. P. Hanley shall use care and discretion in manufacturing lumber by seeing that it is properly manufactured; that the same be graded properly when shipping, stacked, or put in sheds as the case may be and cared for as to damage as little as possible, and see that the lumber is properly counted and graded when shipped.

SIXTH: J. P. Hanley is to see that the orders sent by the Crescent Lumber Company are as promptly and properly filled as possible and that he will see that the stock of lumber is sawn so as to be generally called for by the trade.

SEVENTH: J. P. Hanley is to manufacture and ship the aforesaid lumber according to the grading rules of the Mississippi Valley Lumbermen's Association, and ship the same in the name of the Crescent Lumber Company to the parties to whom the Crescent Company shall order it shipped, sending list of lumber shipped in each car, together with a bill of lading for car, promptly to the Crescent Company's office at Kan-

sas City, Missouri, and agrees to manufacture no lumber from rough lumber owned by the Crescent Company for any other person or firm during the term of this agreement (except it be for local consumption in the town of Northport) and then on account of the Crescent Company, such sales to be reported monthly to the Crescent Company and settlement made for manufacturing same upon the same basis as lumber shipped out upon written orders of the Crescent Company.

EIGHTH: J. P. Hanley is to see that all lumber is so piled that it can be insured in standard insurance companies according to first class underwriters' requirements; also that a clear space of two hundred (200) feet shall be kept between the planing mill and sheds, and one hundred (100) feet between the rough dry shed and the piles of rough lumber, if required by the insurance company.

NINTH: J. P. Hanley agrees to furnish to the Crescent Company a receipted pay roll showing their labor is paid in full each month, and if lumber is manufactured for logs purchased aside from those cut from J. P. Hanley's own timber holdings, a statement showing that there are also paid for each month is to be made.

TENTH: This contract shall continue in force for the period of one year; at the termination of this contract J. P. Hanley is to purchase all of the lumber that the Crescent Company may have on hand in the sheds and on the yard at its original cost per thousand feet, on an inventory taken jointly, and in case the amount on hand at that time, plus the shipments already made,

shall not amount to the amount of lumber purchased in the rough J. P. Hanley is to make the amount good, and on the other hand should the amount of lumber on hand at the termination of this contract, plus the shipments, amount to more than the lumber purchased in the rough, J. P. Hanley is to have the benefit of any such overrun. In case J. P. Hanley should not have the money with which to make this purchase, he agrees to manufacture and load out all such lumber that may be on hand, for the Crescent Company under the terms of this contract, as soon as possible the Crescent Company to discontinue purchasing at the time of the notice of termination of the contract.

Executed in duplicate this sixth day of March, 1909.

CRESCENT LUMBER COMPANY.

By THEO. C. SHERWOOD.

By T. B. MOORE.

JAMES P. HANLEY.

KATHERINE HANLEY.

IV.

Thereafter, in pursuance of the terms of said contract the plaintiffs paid to the defendants the annual rental due to them for the lease of the lumber sheds, rough dry sheds, and lumber yards of the defendants, as specified in the first paragraph of said agreement. Defendant James P. Hanley, for the purpose of cheating and defrauding these plaintiffs, falsely and fraudulently represented to these plaintiffs that he had sawed lumber for the plaintiffs in accordance with the terms of said contract and that said lumber was in pile upon the ground leased to these plaintiffs and that there was due

to the defendants, by virtue of said contract, divers sums of money, and the said James P. Hanley, in pursuance of said fraudulent design, furnished to these plaintiffs certified stock sheets as provided in said contract of such lumber, and demanded of these plaintiffs payment for such lumber in pursuance of the terms of said contract. Thereupon, replying upon the truth of the representations made by the said James P. Hanley, these plaintiffs paid to the defendant from time to time the whole amount of said certified stock sheets at the rates provided for in said contract.

V.

Thereafter from time to time the plaintiffs furnished the defendant James P. Hanley with instructions to ship said lumber to the order of the plaintiffs and to divers destinations, but the said defendant James P. Hanley, upon divers pretexts, delayed said shipments, making certain shipments and postponing others, and finally wholly failed, neglected and refused to make any other or further shipments of lumber. These plaintiffs now learn that the said James P. Hanley fraudulently disregarded his obligations to furnish to these plaintiffs in accordance with said contract, the lumber paid for by the plaintiffs and sold said lumber which the plaintiffs had purchased to other persons, and fraudulently converted the proceeds thereof to his own use, and the said James P. Hanley has now wholly sold and disposed of said lumber, and is wholly unable to comply with said contract, and wholly refuses to furnish to the plaintiffs the lumber which plaintiffs have purchased, and likewise refused to return to the plaintiffs

the money so paid to the defendants upon said contract.

VI

Plaintiffs have kept and observed each and all of the stipulations and covenants contained in said agreement.

VII.

Prior to May 1, 1910, plaintiffs had paid to the defendant James P. Hanley the sum of nine thousand two hundred eighty dollars and eighty-four cents (\$9280.84) over and above all credits and offsets to which the defendants were or are entitled by virtue of any lumber furnished by the defendants, and by virtue of the fraudulent conduct of the defendant James P. Hanley and the breaches of the contract recited, plaintiffs have been damaged in the sum of nine thousand two hundred eighty dollars and eighty-four cents (\$9280.84), together with interest thereon at the rate of eight per cent per annum from May 1st, 1910.

WHEREFORE, Plaintiffs demand judgment of the defendants and each of them in the sum of nine thousand two hundred eighty dollars and eighty-four cents (\$9280.94), with interest thereon at the rate of eight per cent per annum from May 1, 1910, until paid, together with their costs of suit.

(Signed) GRAVES, KIZER AND GRAVES,

Attorneys for Plaintiff.

STATE OF WASHINGTON,

County of Spokane—ss.

T. B. Moore, being first duly sworn, upon his oath states: That he is one of the plaintiffs in the within entitled action; that he has read the foregoing complaint,

knows the contents thereof, and believes the same to be true.

(Signed) T. B. MOORE.

Subscribed and sworn to before me this 21st day of July, 1910.

(Signed) B. H. KIZER,

Notary Public in and for the State of Washington, Residing at Spokane, Washington.

Endorsements: Complaint.

Filed July 22, 1910, at 3:45 o'clock p. m.

C. F. ATKINSON, *Clerk.*

*In the Superior Court of the State of Washington for
Spokane County.*

AFFIDAVIT FOR ATTACHMENT.

T. B. MOORE, and THEO. C. SHERWOOD, Co-partners doing business as Crescent Lumber Company,

Plaintiffs,

vs.

JAMES P. HANLEY and KATHERINE HANLEY,
Husband and Wife,

Defendants.

STATE OF WASHINGTON,
County of Spokane—ss.

T. B. Moore, being first duly sworn, on his oath says: I am the T. B. Moore who is one of the plaintiffs in the above entitled action, and makes this affidavit on behalf of plaintiffs to authorize the issuance of a writ of attachment in this case. The defendants are indebted to the plaintiffs in the sum of \$9280.84 over

and above all just credits and offsets, and this attachment is not sought, and this action is not prosecuted to hinder, delay or defraud any creditors of the defendant.

The defendant has assigned, secreted and disposed of certain of his property and is about to assign, secrete and dispose of the remainder of his property with the intent to delay and defraud his creditors.

The defendants have been guilty of a fraud in contracting the debt and incurring the obligation for which this action is brought. The indebtedness for which this suit is brought is past due.

(Signed) T. B. MOORE.

Subscribed and sworn to before me this 22nd day of July, 1910.

(Signed) B. H. KIZER,

Notary Public in and for the State of Washington, Residing at Spokane, Wash.

Endorsements: Affidavit of Attachment.

Filed July 22d, 1910, at 3:45 o'clock p. m.

C. E. ATKINSON, *Clerk*.

*In the Superior Court of the State of Washington for
Spokane County.*

BOND FOR ATTACHMENT.

T. B. MOORE and THEO. C. SHERWOOD, Co-
partners doing business as Crescent Lumber Com-
pany,

Plaintiffs,

vs.

JAMES P. HANLEY and KATHERINE HANLEY,
Husband and Wife,

Defendants.

KNOW ALL MEN BY THESE PRESENTS,
that we, T. B. Moore and Theo. C. Sherwood, co-part-
ners doing business as the Crescent Lumber Company,
plaintiffs in the above entitled matter, as principals, and
A. F. McClaine and Mose Oppenheimer, as sureties, are
held and firmly bound unto James P. Hanley and Kath-
erine Hanley, husband and wife, defendants in the
above entitled action, in the sum of twenty thousand
(\$20,000.00) dollars, for the payment of which sum
well and truly to be made, we bind ourselves, and each
of us, our, and each of our heirs, and personal repre-
sentatives firmly by these presents.

The condition of the foregoing obligation is such that
whereas an action entitled as above has been commenced
in the above entitled court by the above named plain-
tiffs, which said action is for the recovery of the sum
of nine thousand two hundred and eighty dollars and
eighty-four (\$9280.84) from the above named de-
fendants, and in which said action plaintiffs seek a writ
of attachment against the property of the defendants.

NOW THEREFORE if the said plaintiffs shall prosecute said action without delay and shall pay all costs that may be adjudged to the defendants, and the damages which they may sustain by reason of said attachment, not exceeding the sum of twenty thousand (\$20,000.00) Dollars, should said attachment be wrongfully or maliciously sued out, this obligation to be null and void, otherwise to remain in full force and effect.

Dated this 22d day of July, 1910.

(Signed) CRESCENT LUMBER CO.

By T. B. Moore,

Principals.

(Signed) A. F. McCLAINE,

MOSE OPPENHEIMER,

Sureties.

STATE OF WASHINGTON,

County of Spokane—ss.

A. F. McClaine and Mose Oppenheimer, the sureties whose names are subscribed to the above bond, being severally sworn on oath say, each for himself, I am a resident of the State of Washington, and am not an attorney-at-law, clerk of the Superior Court, or other officer of said court, and that I am worth the sum of twenty thousand (\$20,000.00) Dollars over and above all debts and liabilities, and exclusive of property exempt from execution.

(Signed) A. F. McCLAINE.

(Signed) MOSE OPPENHEIMER.

Subscribed and sworn to before me this 22d day of July, 1910.

(Signed) W. J. MATHEWS,
*Notary Public in and for the State of Washington, Re-
siding at Spokane, Wash.*

The foregoing bond this day approved by me.
July 22d, 1910.

(Signed) C. E. ATKINSON, *Clerk.*
Filed July 22d, 1910, at 3:45 o'clock p. m.
C. E. ATKINSON, *Clerk.*

*In the Superior Court of the State of Washington for
Spokane County.*

T. B. MOORE and THEO. C. SHERWOOD, Co-
partners doing business as Crescent Lumber Com-
pany,

Plaintiffs,

vs.

JAMES P. HANLEY and KATHERINE HANLEY,
Husband and Wife,

Defendants.

WRIT OF ATTACHMENT.

*The State of Washington to the Sheriff of Spokane
County, Greetings:*

In the name of the State of Washington you are hereby required to forthwith seize and take into your possession and safely keep the property of the above named defendants James P. Hanley and Katherine Hanley, in your county, not exempt from execution, sufficient to satisfy the plaintiff's claim amounting to Ninety-two hundred and eighty and 84-100 (\$9280.84)

Dollars, together with their costs and expenses, and of this weit make legal service and due return.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court, this 22d day of July, 1910.

(Seal)

C. E. ATKINSON, *Clerk.*

GRAVES, KIZER AND GRAVES,

Attorneys for Plaintiffs.

STATE OF WASHINGTON,

County of Spokane—ss.

I, F. K. Pugh, Sheriff of Spokane County, do hereby certify that, under and by virtue of the within Writ of Attachment, I did on the 22d day of July, 1910, levy upon and attach all the right, title and interest of the within named defendants James P. Hanley and Katherine Hanley, his wife, in and to the following described real property, to-wit:

Lot thirteen (13) in block one hundred and twenty-seven (127) and lot seventeen (17) in block one hundred and twenty-six (126) all in Lidgerwood Park Addition to the City of Spokane, lots five (5) seven (7), sixteen (16) and eighteen (18) in block seven (7) of the Northeast addition to Ross Park, an addition to the City of Spokane, and lots thirty-seven (37) and thirty-eight (38) and the east half of lot thirty-six (36) in block eight (8) of Second Addition to West Riverside Addition to the City of Spokane.

Dated this 22d day of July, 1910.

(Signed) F. K. PUGH, *Sheriff.*

By W. L. JACKSON, Deputy.

Sheriff's fees.

Copies
Mileage
Total

Endorsements: Attachment.

Filed July 22d, 1910, at 4:15 o'clock p. m.

C. E. ATKINSON, *Clerk.*

W. W. JESSUP, *Deputy.*

In the Superior Court.

STATE OF WASHINGTON,

County of Spokane—ss.

I, Glen B. Derbyshire, Clerk of the Superior Court, within and for said County of Spokane, State of Washington, do hereby certify that I have compared the foregoing copies of the record of the summons complaint, affidavit for attachment, bond for attachment, and writ of attachment, in the case of T. B. Moore and Theo. C. Sherwood, co-partners doing business as Crescent Lumber Company, Plaintiffs, vs. James P. Hanley and Katherine Hanley, husband and wife, Defendants, with the original records thereof now remaining in this office and have found the same to be correct transcripts therefrom and of the whole of such original records. And I further certify that said exemplification would be received in evidence in all the courts of the State of Washington.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court, at Spokane, in said County and State, this 2d day of January, 1912.

GLEN B. DERBYSHIRE,
Clerk of Said Superior Court.

In the Superior Court.

THE STATE OF WASHINGTON,

County of Spokane—ss.

I, J. Stanley Webster, one of the Judges of the Superior Court within and for the said County of Spokane, State of Washington, do certify that the said Court is a Court of Record, and that Glen B. Derbyshire, whose signature is affixed to the foregoing certificate, is the Clerk of the said Superior Court, and that said certificate is attested in due form of law, that the aforesaid signature of said Clerk is genuine and that the seal thereto affixed is the seal of the said Superior Court.

WITNESS my hand at Spokane, in said County and State, this 2d day of January, 1912.

J. STANLEY WEBSTER,

Judge of Superior Court.

In the Superior Court.

STATE OF WASHINGTON,

County of Spokane—ss.

I, Glen B. Derbyshire, Clerk of the Superior Court within and for the County of Spokane, State of Washington, do hereby certify that the Hon. J. Stanley Webster, whose name is subscribed to the preceding certificate, is one of the Judges of the Superior Court within and for the County of Spokane aforesaid, duly elected, sworn and qualified, and that the signature of said Judge to said certificate is genuine.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court at Spo-

kane, in said County and State, this 2d day of January, 1912.

GLEN B. DERBYSHIRE,
Clerk of Said Superior Court.

Endorsements: Defendant's Exhibit "C."

Filed Jan. 3d, 1912.

W. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

No. 964.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
THE ESTATE OF JAMES P. HANLEY, a
Bankrupt,

Complainant,

vs.

JAMES M. HANLEY,

Defendant.

OPINION.

Charles P. Lund, for Complainant.

L. J. Birdseye, for Defendant.

RUDKIN, District Judge. This is a bill in equity filed by a trustee in bankruptcy under subdivision of section seventy of the Bankruptcy Act, to set aside a conveyance from the bankrupt to his son, executed some few months prior to the adjudication.

The rules of law governing cases of this kind are so well understood that it is deemed unnecessary to refer to them or to cite authorities in their support. Fraud is never presumed. Such a charge must be established

by clear and satisfactory proof. Circumstances which merely arouse suspicion are not enough. The testimony on the part of the defendant tends to show that he paid \$1500 in cash for the property in controversy, which was not disproportionate to its fair market value. The fact of this payment was testified to positively and unequivocally by the grantee and by the grantors, his father and mother. The same witnesses accounted for the purchase money paid as follows: The paternal grandmother of the grantee was possessed of about \$5000 at the time of her death, which occurred some four years prior to the date of the conveyance. This money was kept buried or concealed in or about her little home for a number of years. A few days prior to her death she delivered the money to the defendant's mother with instructions to keep it as she herself had kept it, until the defendant should attain his majority, and that upon his attaining his majority she should pay over to him the sum of \$2500. The mother kept the money as directed and paid over to the defendant at his majority, which occurred about eighteen months prior to the conveyance, the sum of \$2500. The defendant kept the money concealed in a tin can in a stove in the basement from that time until he paid over to his father the sum of \$1500 at the time of the execution of the deed. Other testimony was offered tending to show that the grandmother was possessed of money and kept it buried or concealed in the manner indicated. As against this the complainant relies on the inherent improbability of the truth of this testimony upon certain admissions made by the defendant and the bankrupt; upon the fact that

the deed was not recorded for some months, and then at the instance of the bankrupt; and upon other circumstances of minor importance. That the defendant himself made admission against his interest is not established by the proof. The only witness who testified to such admissions was a hostile one, and in view of the denial by the defendant I do not think the fact is established. That admissions of some kind were made by the bankrupt himself some months after the conveyance tending to show that the conveyance was without consideration, does not admit of doubt. But whether these admissions related to this or other conveyances, and whether the defendant was present at the time the admissions were so made, admits of question. It is admitted that three transfers were made by the bankrupt at different times, and it is possible that the admissions attributed to him referred to a later transfer, as claimed. There is testimony tending to show that the defendant himself was present when these admissions were made, but his own positive testimony and that of his mother is to the contrary. The testimony of the defendant as to his presence is either true or wilfully false, while the other witnesses who testified to his presence may well be mistaken. I admit that the story told by the defendant and his witnesses seems improbable, and the account given by the bankrupt of the disposition made of this large sum of money is far from satisfactory; but mere suspicion will not support a decree for the complainant, and I do not feel that I have that abiding conviction of the truth of the charges of fraud contained in the bill that a court should entertain before

setting aside a conveyance on the ground of fraud. The bill is therefore dismissed.

Endorsements: Opinion.

Filed in the U. S. District Court, Eastern District of Washington, Jan. 23d, 1912.

W. H. HARE, *Clerk.*

In the District Court of the United States for the Eastern District of Washington, Northern Division.

DECREE.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,

Complainant,

vs.

JAMES M. HANLEY,

Defendant.

This cause came regularly on for trial before the Court the 4th day of January, 1912, upon the pleadings of the respective parties hereto and the issues thereby made and joined herein; the complainant appeared by his attorney herein, Charles P. Lund, Esq.; the defendant appeared in person and by his attorney herein, L. J. Birdseye, Esq.; and the cause proceeded regularly to trial. The complainant's witnesses were duly sworn and examined, and the defendant and his witnesses were duly sworn and examined in support of the respective pleadings and upon the issues herein; the Court duly heard all the evidence introduced and proof made and the argument of their said attorneys in behalf

of the respective parties hereunto upon the evidence and the law applicable thereto; and thereupon the Court took the cause and its decision thereof under advisement.

And now, on this 8th day of February, 1912, the Court having heretofore, after due deliberation and consideration, and being fully advised in the premises, rendered and made its opinion and decision in writing, herein, that the complainant's bill of complaint in this cause be dismissed, and stating the reasons and grounds therefor;

NOW, THEREFORE, IT IS BY THE COURT CONSIDERED, ADJUDGED AND DECREED: That the complainant's said bill of complaint in this cause be and the same hereby is dismissed, and that this cause be and it hereby is dismissed out of court, that the complainant have and recover naught in this action; and that the defendant have and recover of and from the complainant the defendant's costs and disbursements in this cause, to be taxed according to law.

Done in open court this 8th day of February, 1912.

(Signed) FRANK H. RUDKIN,
Judge of Above Named Court.

Endorsements: Decree.

Filed in the U. S. District Court, Eastern District of Washington, February 8th, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH.

O. K. as to form.

(Signed) CHAS. P. LUND.

IN EQUITY.

In the District Court of the United States for the Eastern District of Washington.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY,

Complainant,

vs.

JAMES M. HANLEY,

Defendant.

ASSIGNMENT OF ERRORS.

And now, on the 5th day of August, 1912, came the complainant, by Charles P. Lund, his solicitor, and says that the decree in said cause is erroneous and against the just rights of said plaintiff, for the following reasons:

First: Because the evidence shows that the deed of conveyance from James P. Hanley, the bankrupt, and his wife, Katherine Hanley, of Lots Five (5), Six (6), and Sixteen (16) and Eighteen (18) in Block Seven (7), of Northeast Addition to Ross Park, an addition to Spokane, Spokane County, Washington, dated May 2d, 1910, and afterwards on the 18th day of July, 1910, filed for record in the Auditor's Office of Spokane County, Washington, and recorded in Book 264 at Page 604, was so executed without any present consideration, or any consideration whatsoever, from defendant, and at a time when the grantors were insolvent and was so made for the purpose and with the intent of the parties thereto to hinder, delay and de-

fraud the creditors of said grantors, and the assets in the hands of complainant as trustee in bankruptcy of James P. Hanley, bankrupt, or known to the said trustee, are insufficient to pay the claims of creditors which have been proved and allowed against said bankrupt, and with the real estate covered by said conveyance will be insufficient to pay the claims of the creditors of said bankrupt which have been so proved and allowed.

(Signed) CHARLES P. LUND,
Solicitor for Complainant.

Endorsements: Assignment of Errors.

Filed Aug. 5, 1912.

W. H. HARE, Clerk.

By F. C. NASH, *Deputy.*

No. 964.

IN EQUITY.

In the District Court of the United States for the Eastern District of Washington.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,
Complainant,

vs.

JAMES M. HANLEY,

Defendant.

PETITION FOR APPEAL.

To the Honorable Frank H. Rudkin, District Judge:

The above named complainant feeling himself aggrieved by the decree made and entered in this cause on the 8th day of February, A. D. 1912, does hereby appeal from

said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith, and prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals, sitting at San Francisco.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

(Signed) CHARLES P. LUND,
Solicitor for Complainant.

The above petition granted and appeal allowed, without bond, as provided by law.

(Signed) FRANK H. RUDKIN,
Judge.

Endorsements: Petition for appeal and order allowing appeal.

Filed August 5, 1912.

W. H. HARE, *Clerk.*

By S. M. RUSSELL, Deputy.

*In the District Court of the United States in and for the
Eastern District of Washington.*

No. -----

IN EQUITY.

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,

Complainant,

vs.

JAMES M. HANLEY,

Defendant.

CITATION. (LODGED COPY).

UNITED STATES OF AMERICA TO JAMES M.
HANLEY, GREETING:

You are hereby notified that in a certain case in equity in the United States District Court, for the Eastern District of Washington, wherein R. F. Knight, Trustee in Bankruptcy of James P. Hanley, a Bankrupt, is complainant, and James M. Hanley is defendant, an appeal has been allowed the complaint therein to the Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in said court at San Francisco, 30 days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Hon. Frank H. Rudkin, Judge of the United States District Court for the Eastern District of Washington, this 26th day of August, 1912.

(Signed) FRANK H. RUDKIN,

(Seal)

United States District Judge.

Endorsements:

Service of a copy of the within Citation admitted this
26th day of August, 1912.

(Signed) L. J. BIRDSEYE,
Attorney for Defendant.

Citation (Lodged Copy).

Filed August 26, 1912.

W. H. HARE, *Clerk.*

By FRANK C. NASH, *Deputy.*

No. 964.

*In the District Court of the United States, Eastern Dis-
trict of Washington, Northern Division.*

R. F. KNIGHT, TRUSTEE IN BANKRUPTCY OF
JAMES P. HANLEY, a Bankrupt,
Complainant,

vs.

JAMES M. HANLEY,

Defendant.

To the Clerk:

PRAECIPE FOR TRANSCRIPT OF RECORD.

You will please prepare and certify to the Circuit
Court of Appeals the following papers in the above-
entitled action, to-wit:

Complaint, Answer, Replication, Opinion of Honor-
able Frank H. Rudkin, District Judge, Decree, Record
of Testimony taken at the trial and certified by the Dis-
trict Judge, Petition for Appeal and Order Allowing
Same, Assignment of Errors, and Citation; also the
following Exhibits: Exhibit "A," Filed January 3,

1912; Exhibit -----, filed January 3, 1912, and Exhibit -----, filed January 3, 1912, and praecipe for transcript of the record.

(Signed) CHARLES P. LUND,
Solicitor for Complainant.

Endorsements: Praecipe for Transcript of the Record.

Filed August 10, 1912.

W. H. HARE, *Clerk.*

By S. M. RUSSELL, Deputy.

In the District Court of the United States, Eastern District of Washington, Northern Division.

No. 964.

R. F. KNIGHT, Trustee in Bankruptcy of the Estate of James P. Hanley, Bankrupt,

Complainant,

vs.

JAMES M. HANLEY,

Defendant.

CLERK'S CERTIFICATE TO TRANSCRIPT OF
THE RECORD.

United States of America,
Eastern District of Washington—ss.

I, W. H. HARE, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing printed pages, numbered from one to 209 inclusive, to be a full, true, correct and complete copy of so much of the record, testimony, papers and other proceedings as called for by the appellant in his praecipe as the same appears on page 208

of this printed record, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the order, judgment and decree of the District Court of the United States for the Eastern District of Washington, Northern Division, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the Original Citation issued in this cause.

I further certify that the cost of preparing, certifying and printing the foregoing transcript is the sum of \$250.40, and that the said sum has been paid to me by Charles P. Lund, Solicitor for the Complainant and Appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Spokane, in said District, this 28th day of August, 1912.

(Seal)

(Signed) W. H. HARE,

Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY (a Corporation),

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Idaho, Northern Division.

FILED

JAN 23 1913

United States
Circuit Court of Appeals

For the Ninth Circuit.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY (a Corporation),

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Idaho, Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys.]

W. W. COTTON, Esq., A. C. SPENCER, Esq.,
FRED E. BUTLER, Esq., W. A. ROBBINS,
Esq., Portland, Oregon,

Messrs. HAMBLÉN & GILBERT, Spokane, Wash.,
Attorneys for Plaintiff in Error.

C. H. LINGENFELTER, Esq., Boise, Idaho,
Attorney for Defendant in Error.

*In the District Court of the United States Within
and for the District of Idaho, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY, a Corporation,
Defendant.

Complaint.

Comes now the plaintiff, the United States of America, by C. H. Lingenfelter, United States Attorney for the District of Idaho, acting in this behalf by the direction of the Attorney General of the United States, and complains of the defendant, The Oregon-Washington Railroad & Navigation Company, and alleges:

1st. That at all times hereinafter mentioned the Oregon-Washington Railroad & Navigation Company was and is a corporation organized and existing under and by virtue of the laws of the State of

Oregon, engaged in business as a common carrier in interstate commerce and operating a line of railroad extending from the State of Oregon into the States of Washington and Idaho.

2d. That said railroad forms a part of a line of road over which passengers and freight, including mules, horses, cattle, sheep, swine and other animals, are conveyed between, into and through the states hereinbefore mentioned.

3d. That heretofore, to wit, on or about the 6th day of March, 1912, the defendant received at Endicott in the State of Washington for shipment to Wallace, Idaho, certain [1*] swine, to wit, one carload consigned by John Daubert to Mahoney Bros. on the following car, to wit, O. S. L. 12,890, and thereupon the defendant conveyed said stock on or over its line aforesaid as a common carrier in the same car aforesaid to its station at Wallace, Idaho; that said stock aforesaid was loaded at 11:30 o'clock A. M. on said date of March 6, 1912, at Endicott as aforesaid, and unloaded at 30 minutes past 7 o'clock A. M. at Wallace, Idaho, on the 8th day of March, 1912; that said stock was continuously confined in said car from the time of its loading as aforesaid to the time of the unloading as aforesaid at Wallace, Idaho, while in transit on and over the line of said defendant without food, water, rest or unloading, a period of 44 consecutive hours.

4th. That from the time the said animals were first loaded at Endicott, Washington, as aforesaid, said animals had been continuously confined in the

*Page-number appearing at foot of page of original certified Record.

said car without unloading, feeding, watering or resting, knowingly and wilfully by the said defendant for a longer period than 28 consecutive hours, to wit, for a period of 44 consecutive hours.

5th. That by reason of the foregoing, said defendant became and was and now is liable to the plaintiff, the United States of America, as penalty in the sum of Five Hundred Dollars.

WHEREFORE, the plaintiff demands judgment against the said defendant for the sum of Five Hundred Dollars, together with costs and disbursements of suit.

C. H. LINGENFELTER,
United States Attorney for the District of Idaho, and
Attorney for Plaintiff, Residing at Boise, Idaho.
[2]

State of Idaho,
County of Ada,—ss.

C. H. Lingenfelter, being first duly sworn, on oath deposes and says that he is the United States Attorney of the District of Idaho, and as such makes this affidavit for and on behalf of the plaintiff. That he has read the above and foregoing complaint and knows the contents thereof, and that he believes the facts stated in said complaint to be true.

C. H. LINGENFELTER.

Subscribed and sworn to before me this 10th day of April, 1912.

A. L. RICHARDSON,
Clerk of the United States District Court.

[Endorsed]: Filed April 10, 1912. A. L. Richardson, Clerk. [3]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 437.

THE UNITED STATES OF AMERICA

vs.

THE OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY, a Corporation.

Summons.

The President of the United States, to The Oregon-Washington Railroad & Navigation Company, a Corporation, the Above-named Defendant, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Coeur d'Alene in said District, and answer the complaint filed against you in the above-entitled action within twenty days from the date of the service of this Summons upon you, if served within the Northern Division of said District, or if served within any other Division of said District, then within forty days from the date of such service upon you; and if you fail so to appear and answer, for want thereof, the plaintiff will apply to the Court for the relief demanded in the complaint, to wit:

For judgment in the sum of Five Hundred Dollars, together with costs and disbursements of suit.

The facts more fully appearing in plaintiff's complaint, a certified copy of which is served herewith, hereby referred to and made a part hereof.

And this is to COMMAND you, the MARSHAL

of said district, or your DEPUTY, to make due service and return of this Summons. Hereof fail not.

Witness the Honorable FRANK S. DIETRICH, Judge of the District Court of the United States, and the seal of said Court, affixed at Boise, in said District, this 11th day of April, 1912.

[Seal] A. L. RICHARDSON,
Clerk.

This is to certify that I received the within summons together with a certified copy of the complaint at Lewiston, Idaho, on the 15th day of April, 1912; and served the same on The Oregon-Washington Railroad & Navigation Company, a corporation, on the 16th day of April, 1912, at Lewiston, Nez Perce County, Idaho, by handing to and leaving with C. W. Mount, agent of The Oregon-Washington Railroad & Navigation Company, a corporation, a duplicate of the within summons together with a certified copy of the complaint.

Dated April 16th, 1912.

S. L. HODGIN,
U. S. Marshal.
By Wm. Schuldt,
Deputy.

U. S. District Attorney, Boise, Idaho, Attorney for Plaintiff.

[Endorsed]: No. 437. In the District Court of the United States for the District of Idaho, Northern Division. The United States of America vs. The Oregon-Washington Railroad & Navigation Co. Summons. Returned and filed April 29, 1912. A.

L. Richardson, Clerk. By ———, Deputy Clerk. [4]

*In the District Court of the United States Within
and for the District of Idaho, Northern Division.*

No. 437.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVI-
GATION COMPANY, a Corporation,

Defendant.

Answer.

Comes now the defendant, Oregon-Washington Railroad & Navigation Company, and for answer to plaintiff's complaint admits, denies and alleges as follows, to wit:

I.

Admits the allegations contained in paragraph one of the complaint.

II.

Admits the allegations contained in paragraph two of the complaint.

III.

Denies each and every allegation contained in paragraph three of the complaint, except that defendant admits that on the sixth day of March, 1912, John Daubert delivered to the defendant at Endicott, Washington, a shipment of hogs, loaded in O. S. L. car No. 12,890, consigned to Mahoney Bros. at Wallace, Idaho. Admits the shipment was loaded at En-

dicott at 11:30 A. M. on said date; admits that said shipment was transported over [5] said defendant's line of railroad from Endicott, Washington, to Wallace, Idaho, but this defendant alleges that it has no knowledge or information sufficient to form a belief as to whether or not said shipment was not unloaded until 7:30 A. M. on the eighth day of March, 1912, and therefore denies the same, and the whole thereof, and alleges that said shipment moved as hereinafter set forth.

IV.

Denies each and every allegation contained in paragraph four of the complaint.

V.

Denies each and every allegation contained in paragraph five of the complaint.

For a further and separate answer in defense to plaintiff's complaint defendant alleges:

I.

That heretofore and on the sixth day of March, 1912, Jno. Daubert delivered to the defendant, Oregon-Washington Railroad & Navigation Company, at Endicott, Washington, a shipment of hogs, the exact number of which is unknown to this defendant, for transportation over its line of railroad from Endicott, Washington, to Wallace, Idaho, and there to be delivered to Mahoney Bros. as consignee; that said hogs were loaded by Jno. Daubert into O. S. L. car No. 12,890 at the hour of 11:30 A. M. on said March 6th, 1912.

II.

That said shipment was thereafter transported in

due course of business from Endicott, Washington, to Tekoa, Washington, and arrived there at the hour of 6:05 P. M. on March 6th, 1912; [6] that at said time and place the consignor, Jno. Daubert, who had the custody of and was personally in charge of said shipment, executed and delivered to the defendant, Oregon-Washington Railroad & Navigation Company, a written request, signed by himself, which request was separate and apart from any printed bill of lading or other railroad form, authorizing the Oregon-Washington Railroad & Navigation Company to confine said stock for a period of thirty-six hours in a car without unloading into pens for feed, water and rest, as required by the Act of Congress of June 29th, 1906.

III.

That thereafter and in due course of business said hogs were transported from Tekoa, Washington, to Wallace, Idaho, and arrived there at the hour of 9:00 P. M. on March 7th, 1912, and said car was immediately delivered to the shipper and man in charge and spotted for unloading at a properly equipped stock-pen with full notice and knowledge on the part of said Jno. Daubert, the person in charge of said stock, that for reasons, unknown to this defendant, said man in charge of said shipment failed and neglected to unload same within the time required by law, although said shipment was spotted and ready for unloading two hours and twenty minutes prior to the expiration of thirty-six hours from and after 11:30 A. M., March 6th, 1912; that this defendant had no notice or knowledge that said man in charge of the

shipment was not unloading the stock into the pens until after the expiration of the time limited by law.

WHEREFORE, having fully answered plaintiff's complaint herein, defendant demands that this action be dismissed and it have and recover its costs and disbursements herein.

A. C. SPENCER,
FRED E. BUTLER,
W. A. ROBBINS,

Attorneys for Defendant. [7]

State of Oregon,

County of Multnomah,—ss. .

James G. Wilson, being first duly sworn, deposes and says that he is Assistant Secretary of the defendant herein, Oregon-Washington Railroad & Navigation Company; that he has read the foregoing Answer, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters as are therein stated to be on his information and belief and as to those matters he believes it to be true.

JAMES G. WILSON.

Subscribed and sworn to before me this 14th day of May, 1912.

[Seal]

P. C. WOOD,
Notary Public for Oregon.

[Endorsed]: Filed May 15, 1912. A. L. Richardson, Clerk. By M. W. Griffith, Deputy. [8]

*United States District Court, Northern Division,
District of Idaho.*

No. 437.

THE UNITED STATES,

Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVI-
GATION COMPANY,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find for
the plaintiff.

M. J. McHUGH,
Foreman.

[Endorsed]: Filed May 29, 1912. A. L. Richard-
son, Clerk. [9]

*In the District Court of the United States Within
and for the District of Idaho, Northern Division.*

No. 437.

UNITED STATES OF AMERICA,

Plaintiff,

ys.

THE OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY, a Corporation,
Defendant.

Judgment.

In this cause it appearing to the Court that on the
29th day of May, 1912, a jury duly empaneled, found

for the plaintiff, in the above-entitled court, in said cause:

Now, therefore, it is ordered, adjudged and decreed that the plaintiff, the United States of America, do have and recover of and from the defendant, the Oregon-Washington Railroad & Navigation Company, a corporation, the sum of Two Hundred Dollars, being the amount assessed by the Court as a penalty, as provided by law; and further, the sum of \$54.70, as costs.

Dated June 6, 1912.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed June 6, 1912. A. L. Richardson, Clerk. [10]

*In the District Court of the United States in and for
the District of Idaho, Northern Division.*

No. 437.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVI-
GATION COMPANY, a Corporation,
Defendant.

**Stipulation Extending Time for Serving Proposed
Bill of Exceptions.**

IT IS HEREBY STIPULATED and agreed by and between the above-named plaintiff and above-named defendant, through their respective attorneys, that the time within which the above-named defend-

ant may prepare, serve and file its proposed Bill of Exceptions in the above-entitled cause be extended to July 15th, 1912.

C. H. LINGENFELTER,
United States Attorney,
Attorney for Plaintiff.
By H. C. MILLS, Asst.
W. W. COTTON, and
HAMBLIN & GILBERT,
Attorneys for Defendant.

[Endorsed]: Filed July 12, 1912. A. L. Richardson, Clerk. [11]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 437.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVI-
GATION COMPANY, a Corporation,
Defendant.

Stipulation [Concerning Bill of Exceptions].

IT IS HEREBY STIPULATED AND AGREED, by and between plaintiff and defendant in the above-entitled cause, by their respective attorneys, that the Bill of Exceptions hereto attached embodies all of the exceptions proposed by either party hereto in said cause and that there are no amendments or proposed amendments thereto; that the said Bill of Exceptions may be settled by the Judge of said Court

in the manner provided by the rules of said Court, without further objection by either party hereto.

Dated this 28th day of October, 1912.

C. H. LINGENFELTER,
United States District Attorney,
Attorney for Plaintiff.

W. W. COTTON,
HAMBLÉN & GILBERT,
Attorneys for Defendant, Oregon-Washington Rail-
road & Navigation Co. [12]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW—No. 437.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

OREGON-WASHINGTON RAILROAD & NAVI-
GATION COMPANY, a Corporation,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that on the 29th day of May, 1912, at Coeur d'Alene, Idaho, the above-entitled action came regularly on for trial before the Honorable Frank S. Dietrich, plaintiff appearing by C. H. Lingenfelter, United States Attorney, the defendant appearing by W. A. Robbins and W. S. Gilbert; a jury was duly empaneled and sworn to try the cause; whereupon counsel for the respective parties stipulated that this case and case No. 438 should

be consolidated for the purpose of trial, separate verdicts to be rendered in each case; whereupon the following proceedings were had;—

The plaintiff produced witnesses whose testimony showed that the car of hogs in question were loaded on the car at Endicott, Washington, at 11:30 A. M., on the 6th of March, 1912, consigned over the railroad line of the defendant to Mahoney Bros., at Wallace, Idaho; that said car of hogs was accompanied by John Daubert as care-taker in charge of said shipment; that a thirty-six hour release was executed by Daubert; that the shipment arrived at Wallace, Idaho, on March 7th, at about eight o'clock P. M., that the hogs remained in the car all night of March 7th, and were not unloaded until the morning of the 8th, at about 9:30 A. M., at Mahoney Bros. stockyard, having been transferred on the morning of the 8th to the N. P. Ry. Co., at Wallace, Idaho, for delivery to the [13] stockyards of Mahoney Bros., which were located on the line of the N. P. Ry. Co., at Wallace, Idaho.

Testimony of John Daubert, for Plaintiff.

One JOHN DAUBERT testified that on the evening of March 7th, 1912, at eight P. M., when the car of hogs arrived at Wallace, that he left the car and notified Mr. Mahoney, and told him the car was in Wallace, and told him to take care of it; that Mr. Mahoney told him that he would take care of the car, and that he did not know what was done with the car of hogs thereafter.

He further testified as follows: "The reason I went with the car of hogs was, the O. W. R. & N.

(Testimony of John Daubert.)

agent at Endicott wouldn't allow the car of hogs to go without a man going with them. I don't know whether it is customary in the shipment of hogs for a caretaker to go along with them. That seems to be the custom with us down there. He won't allow them to go out unless a man goes along with them. The purpose I went along with them for was to look after them in a general way and see that they reached their destination and when they arrived notify the consignee. When the train pulled into Wallace, on the night of the 7th, it stopped around the depot somewheres and the first thing I did afterwards, I left the train and hunted up Mahoney Bros. I went to their house and found them. It was perhaps fifteen minutes after the train arrived that I found Mahoney Bros., and I told them that the car of hogs had arrived and to take care of them. As to where the car was to be spotted, I told the conductor on the train to spot them in the stockyards and he said he would. I don't remember when he said he would. I can't remember whether I told Mr. Mahoney that the car would be spotted at the stockyards. I think that I did. I am pretty positive that I did. I told him the time was pretty near up to unload them; told him it was up at nine o'clock. I told Mr. Mahoney I had signed a thirty-six hour release, and that the time would be [14] about nine o'clock and it was because the time was short that I took the trouble to go up there and tell him about the car personally. After I went up to see Mahoney

(Testimony of Alexander D. Wallace.)

Bros., I went to bed. I relied upon Mahoney Bros.' statement that they would look after the shipment."

Testimony of Alexander D. Wallace, for Plaintiff.

One ALEXANDER D. WALLACE testified that he was in the employ of Mahoney Bros. at Wallace, Idaho, at the time of the arrival of the car of hogs. That he thought the car was sealed. That when cars of stock are spotted at Mahoney Bros. yards he usually broke the seal with instructions from Mahoney Bros. to unload the car. That he never broke the seal without having instructions to unload and that he took his instructions from Mahoney Bros.

He further testified: "I have never seen any of the railroad employees come around there and break the seals. The breaking of the seal has always been done by some employee of Mahoney Bros."

[Testimony of David Franklin Norris, for Plaintiff.]

DAVID FRANKLIN NORRIS, witness for plaintiff, testified:

"I was in Wallace about March 7 of this year; remember a shipment of hogs in charge of Mr. John Daubert arrived at Wallace. I know that the time the train arrived was between the hours of eight and nine o'clock that evening, on the evening of March 7, 1912. After the car reached Wallace there was a certain amount of regular ordinary switching done, and about nine forty-five that same evening the car was spotted at the O. W. R. & N. stockyards in the O. W. R. & N. switchyards, in Wallace, Idaho. I left the car then and the next morning about six thirty-five the car was still in the *shoots* in the O. W.

(Testimony of Alex. D. Wallace.)

R. & N. stockyards, and was not unloaded. It was unloaded the next morning at nine thirty.” [15]

[**Testimony of Alex. D. Wallace, for Plaintiff.**]

ALEX. D. WALLACE, a witness for plaintiff, testified:

“I was in Wallace on the 8th day of March last year and remember a carload of hogs arrived at Wallace about that date. I know of a car arriving on the morning of the 8th. It was spotted at the Mahoney slaughter-house when I seen it and contained hogs. The car was unloaded about eight o’clock on the morning of the 8th. It was the only car that arrived on that date. The car was delivered to Mahoney Bros. about seven-forty on the morning of the 8th of March. It is customary for Mahoney Brothers to always receive the stock in their own pens and not at the pens of the railroad company. This particular shipment was received at seven-forty on the morning of the 8th.”

The COURT.—Where is this slaughter-house of Mahoney Brothers, relative to the stockyards of this defendant company?

A. It is about a mile or a mile and three-quarters, what they call nine mile, on a branch of the N. P. road.

The COURT.—Isn’t it on the line of railroad of this company?

A. Not on the O. W. R. & N. They are transferred over. They set them over on the switch, as I understand it, and the N. P. switches them to Mahoney’s stockyards. That is where I get my instructions from, from Mahoney’s.

Recital Relative to Defendant's Motion for Nonsuit.

Thereupon the plaintiff rested its case and the defendant made the following motion for nonsuit:

[Motion for a Nonsuit.]

"Comes now the defendant, the O. W. R. & N. Company, and moves the Court for a judgment of nonsuit herein, on the ground and for the reason that the plaintiff has failed to prove a sufficient case for the jury, in this:

1. The evidence shows that John Daubert, the man in charge of said stock, executed a thirty-six hour release at Tekoa, Washington, on March 6th, 1912; that the shipment was spotted [16] there ready for unloading at properly equipped pens, at Wallace, Idaho, before the expiration of the statutory limit; that the failure to unload said stock was due to unavoidable causes, which could not be anticipated or avoided by the exercise of due diligence and foresight, in that the man in charge of the stock abandoned them after the car was spotted, and the defendant had no notice thereof until after the expiration of the thirty-six hours.

2. The car was spotted and ready for unloading at Wallace more than three hours prior to the expiration of the statutory limit, and the failure to unload was due to the fact that the man in charge and the consignee had some misunderstanding about unloading, of which defendant had no notice until after the expiration of thirty-six hours, and the same was a matter defendant could not reasonably anticipate, and, having no notice or knowledge of the fail-

ure of the men to unload, it cannot be said that the defendant knowingly or wilfully confined the stock in violation of the statute.

3. Under the statute, the owner of the stock has the option of sending a caretaker in charge of the stock to load, unload, feed, water and tend the stock en route. After the man has exercised this option there is no duty on the part of the carrier to load, unload, or care for the stock, until it has actual or constructive notice that the caretaker is not giving them proper attention, and after the carrier has spotted a car at their properly equipped pens, with the caretaker in charge, it has a right to presume that he will unload the stock, and the carrier is not required to stand a guard over each caretaker to see that he gives his stock proper attention and unloads them within the statutory limit, since it cannot with due diligence and foresight be anticipated that the man in charge would not unload them." [17]

**Testimony of J. H. Manning, Witness for
Defendant.**

One J. H. MANNING, testified that he was conductor out of Tekoa to Wallace on March 7th, 1912, and had charge of this shipment of hogs. That they left Tekoa at 6:40 A. M. on the morning of March 7th, and arrived at Wallace about 8:55 P. M. of the same day.

He further testified that Mr. John Daubert was in charge of the car. He was along to take care of the stock, look after it, and see that it was tended to. "Between Tekoa and Wallace, as we were approaching Wallace, I had a conversation with Mr. Daubert.

(Testimony of J. H. Manning.)

Knowing the time for unloading would be short after the train got there, that is two hours or over, I questioned him as to whether he would unload the stock and told him the car would be spotted immediately on arrival, for him to do so, and he said he would be done with the stock as soon as it got to Wallace as far as he was concerned, but he would find Mahoney Bros. and see that they tended to the stock when he got to Wallace. After the train got to Wallace, the first thing that we did was to put that car at the track pen so that they could unload the stock. That was nine P. M. on the 7th. I was right there myself with two brakemen when the car was spotted. The last place I saw Mr. Daubert was when he was leaving the caboose at Wallace, in the yards. The stock chute is right in the yards, that is about eight or ten car-lengths from the point where he left the caboose. I again saw the car about ten o'clock that night, about an hour after it was spotted. It was still in the stockyards right where I spotted it. The next time I saw it was the next morning between five and five-thirty o'clock. We were called to leave there at 6 o'clock. The car of hogs was billed to Wallace, Idaho, final destination.

The paper you now hand me is a way-bill for a car of hogs O. S. L. 12,890." [18]

Thereupon, by leave of the Court, counsel read from the Way-bill, as follows:

[Description of Way-Bill.]

I am now reading from the document which the witness says is the way-bill which accompanied this

(Testimony of J. H. Manning.)

stock and it is a way-bill under date of March 6th, 1912, Series 170, made by the O. W. R. & N. Co., covering a shipment from Endicott, Washington, to Wallace, Idaho, in O. S. L. Car 12,890. The name of the shipper is John Daubert, 3-6-12 and the name of the consignee and destination is Mahoney Bros., and description is eighty-eight hogs, S. L. & C., and it says a notation on the face here, "loaded at 11-30 A. M. man in charge."

Mr. MANNING further testified on cross-examination:

The car was spotted at nine P. M. on the evening of the 7th, ready to unload. It was sealed. We did not unload the stock at that time because Mr. Daubert was in charge of the stock and said he was going to notify Mr. Mahoney to unload the stock. He knew the car was to be spotted. I told him so. He was not there, to the best of my memory. I knew he had gone up town. I knew that he had abandoned the car. I also knew unless someone arrived there that night the stock would remain loaded until the next morning. I passed by the next morning and saw the car still there. I did not unload it the next morning. The car was still sealed at that time. My jurisdiction over the car ended.

Testimony of H. A. Bard, for Defendant.

One H. A. BARD testified that he was agent for defendant and was at the time of the shipment of the hogs. He testified the first time he knew anything about this shipment was about 9:15 P. M. the night of the 7th. "I knew of a car of stock arriving that

(Testimony of H. A. Bard.)

evening and I waited around the depot. Our closing hours are six o'clock, but I waited around until the conductor of 94; I waited for him to come to the depot, after he arrived at the lower yards, to ascertain whether or not any effort had been made [19] to take care of the shipment, for the express purpose of keeping away from violating the 36 hour law, and when he arrived I asked him about it. He told me that the car of stock had a man in charge, Mr. John Daubert, and Mr. Daubert was going to notify Mahoney Bros., consignee to look after the car; so long as the man was in charge of the car I considered the car would be taken care of. I did not find out the car had not been unloaded until the following morning about eight o'clock. Mahoney's plant is between one and three-quarter miles and two miles from Wallace. Where a shipment is billed to Wallace for Mahoney Bros., it is necessary to take up with Mahoney Bros., Consignee, after delivery and get them to advise what delivery they wish. The defendant has no tracks extending from Wallace to Mahoney Bros.' plant. The car moves over the Northern Pacific."

Upon cross-examination witness testified:

"I didn't make any effort other than what I have stated, on the evening of the 7th to see that the hogs were unloaded. I knew the hogs were in the car that night. The conductor told me so. I didn't know where they were. He told me that. He told me that they were spotted at the O. W. R. & N. Co.'s chute. After I learned the following morning that the car

had not been unloaded, we immediately delivered to the N. P. to go to Mahoney Bros."

**Recital as to Offer and Introduction of Contract
(Defendant's Exhibit I.)**

By permission of the Court, counsel was permitted to read into the records certain portions, as follows:

[Portion of Contract—Defendant's Exhibit I.]

"The shipper agrees to load, unload and reload all of said stock at his own expense and risk while it is in any stockyards, whether the same be owned or controlled by said carrier or otherwise, and while on the cars or at any feeding points, or at any place where the same may be unloaded for any purpose whatever." [20]

Also section 8 of the contract reading as follows:

"The shipper expressly agrees to load, unload and care for said stock while upon the cars or premises of the carrier, in a careful and humane manner in strict compliance with the laws of the United States and of each and every State through which said stock may be transported."

Mr. LINGENFELTER.—That is objected to, for the reason that if the defendant company could enter into a contract with the shipper or the owner of the stock it would nullify and abrogate the provisions of the Act of Congress known as the "twenty-eight hour law," which could be supplemented by any contract between the parties.

The COURT.—I am going to let this go in upon the one theory, the theory which I have heretofore suggested to counsel. The objection is overruled. You may have your exception.

Recital as to Motion for Directed Verdict.

Thereupon the defendant having closed its case, a motion for a directed verdict on the grounds set forth in the motion for nonsuit heretofore set forth was made.

[Motion for Directed Verdict.]

“Now comes the plaintiff at this time and moves the Court to direct an instructed verdict in this case, No. 437, for the reason that the evidence conclusively shows that the car arrived in Wallace on the evening of March 7th at about eight P. M., was spotted in the stockyards at nine P. M., and was not unloaded on that evening, but remained on the track until the next morning, until the morning of the 8th, between 7:30 and eight o'clock, the car was sealed, no attempt being made on the part of the railroad company to unload the stock on that evening; that the stock was not delivered to Mahoney Brothers until 7:30 or 7:35 [21] on the morning of the 8th, making a period of something like 44 hours and five minutes elapsing from the time the stock was loaded at Endicott, Washington, until they arrived and were delivered to Mahoney Brothers, the consignees, at Wallace, Idaho.” This Motion the Court granted.

Thereupon the defendant took an exception to the ruling of the Court, which exception was allowed.

[Order Settling and Allowing Bill of Exceptions.]

The foregoing is according to the attached Stipulation of counsel, this day settled and allowed as de-

defendant's Bill of Exceptions.

FRANK S. DIETRICH,
Judge.

October 28th, 1912.

[Endorsed]: Filed Oct. 29, 1912. A. L. Richardson, Clerk. [22]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW—No. 437.

OREGON-WASHINGTON RAILROAD & NAV-
IGATION COMPANY, a Corporation,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Petition for Writ of Error.

And now comes the plaintiff in error, Oregon-Washington Railroad & Navigation Company, a corporation (defendant in the action), and says that on or about the 1st day of June, A. D. 1912, the above-entitled District Court entered a judgment herein in favor of the plaintiff, United States of America, and against the defendant, Oregon-Washington Railroad & Navigation Company, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Error which is attached to and filed with this petition.

WHEREFORE, this defendant prays that a Writ

of Error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

A. C. SPENCER,

HAMBLEN & GILBERT,

Attorneys for Plaintiff in Error, Oregon-Washington Railroad & Nav. Co. [23]

[Order Allowing Writ of Error.]

On consideration of the foregoing petition and assignments of errors attached thereto, the Court does allow the Writ of Error to defendant, Oregon-Washington Railroad & Navigation Company, upon giving bond according to law in the sum of Five Hundred Dollars, which shall operate as a supersedeas bond.

Dated this 27th day of November, 1912.

FRANK S. DIETRICH,

United States District Judge for the District of Idaho, who tried said cause and entered said judgment.

[Endorsed]: Filed Nov. 27, 1912. A. L. Richardson, Clerk. [24]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW—No. 437.

OREGON-WASHINGTON RAILROAD & NAV-
IGATION COMPANY, a Corporation,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Assignment of Errors.

Plaintiff in error, the Oregon-Washington Railroad & Navigation Company, hereby assigns the following errors committed at the trial court:

1. The District Court erred in denying the motion of defendant herein for nonsuit at the close of plaintiff's case.

2. The District Court erred in refusing to direct a verdict in favor of the defendant below at the close of all the testimony.

3. The District Court erred in granting plaintiff's motion for a directed verdict.

4. The District Court erred in entering judgment for the plaintiff herein on the verdict of the jury.

WHEREFORE, plaintiff in error prays that said judgment of the District Court be reversed and the said District Court ordered to enter judgment dismissing the action.

A. C. SPENCER,
HAMBLIN & GILBERT,
Attorneys for Plaintiff in Error, Oregon-Washing-
ton Railroad & Navigation Co.

[Endorsed]: Filed Nov. 27, 1912. A. L. Richardson, Clerk. [25]

*In the United States District Court, for the District
of Idaho, Northern Division.*

AT LAW—No. 437.

OREGON-WASHINGTON RAILROAD & NAV-
IGATION COMPANY, a Corporation,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Supersedeas and Cost Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
that we, Oregon-Washington Railroad & Navigation
Company, a corporation, as principal, and National
Surety Company (a corporation organized under the
laws of the State of New York for the purpose of
doing business as a surety and which has complied
with the statutes of the United States authorizing it
to become a surety of bonds in the Courts of the
United States), as surety, are held and firmly bound
unto the United States of America in the just and
full sum of Five Hundred Dollars (\$500.00), to be
paid unto the said above-named United States of
America, its attorneys, officers or assigns, to which
payment, well and truly to be made, we bind our-
selves, our successors and our assigns jointly and
severally by these presents.

Sealed with our seals and dated this 2d day of November, 1912.

Upon the conditions that:

WHEREAS, lately at a session of the United States District Court for the District of Idaho, Northern Division, in a suit pending in said court between the United States of America and the Oregon-Washington Railroad & Navigation Company, a corporation, a judgment [26] was rendered against said defendant upon the verdict of the jury in the sum of Two Hundred Dollars (\$200.00), and costs amounting to Fifty-four Dollars and seventy cents (\$54.70); and,

WHEREAS, said defendant conceiving itself aggrieved thereby, has obtained from said court a Writ of Error to reverse and correct said judgment in that behalf and a citation directed to the above-named defendant in error admonishing said defendant in error to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California, within the time therein fixed; and,

WHEREAS, an order has been entered requiring said defendant to file supersedeas bond and cost bond in the aggregate sum of Five Hundred Dollars (\$500.00);

NOW, the condition of the above obligation is such that if the said Oregon-Washington Railroad & Navigation Company, a corporation, shall prosecute its said Writ of Error to effect, and answer all damages and costs if it fails to make its plea good in said court, then the above obligation to be void;

otherwise to remain in full force and virtue.

This bond is intended as a bond for costs on appeal and as a supersedeas bond.

OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY,

By A. C. SPENCER and
HAMBLÉN & GILBERT,

Its Agents and Attorneys.
NATIONAL SURETY COMPANY.

By JAMES A. BROWN,
Resident Vice-president.

[Seal] Attest: S. A. MITCHELL,
Resident Asst. Secretary.

The foregoing bond is hereby approved this 27th day of November, 1912, and the same when filed shall operate as a bond for costs on appeal and as a supersedeas bond.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Nov. 27, 1912. A. L. Richardson, Clerk. [27]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW—No. 437.

OREGON-WASHINGTON RAILROAD & NAV-
IGATION COMPANY, a Corporation,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Writ of Error.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable
the Judge of the District Court of the United
States, for the District of Idaho, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment, of a plea which is in
the said District Court before you, between the
United States of America, plaintiff, and the Oregon-
Washington Railroad & Navigation Company, a cor-
poration, defendant, a manifest error hath happened,
to the great damage of the said defendant, the Ore-
gon-Washington Railroad & Navigation Company,
a corporation, as by its complaint appears, we being
willing that error, if any hath been, should be duly
corrected, and full and speedy justice done to the
parties aforesaid in this behalf do command you, if
judgment be therein given, that then under your seal,
distinctly and openly, you send the record and pro-
ceedings aforesaid, with all things concerning the
same, to the United States Circuit Court of Appeals,
for the Ninth Circuit, together with this Writ, so
that you have the same at San Francisco on the 27th
day of December, 1912, in said Circuit Court of Ap-
peals for the Ninth Circuit, to be then and there
held, that the record and proceedings [28] being
inspected, the said Circuit Court of Appeals may
cause further to be done therein to correct that error
what of right, and according to the laws and customs
of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 27th day of November, in the year of our Lord one thousand nine hundred and twelve.

[Seal]

A. L. RICHARDSON,

Clerk U. S. District Court, for the District of Idaho.

Allowed by:

FRANK S. DIETRICH,

Judge. [29]

[Endorsed]: No. 437. U. S. District Court, Northern Division, District of Idaho. Oregon-Washington Railroad & Navigation Co., Plff. in Error, vs. United States of America, Deft. in Error. Writ of Error. Filed Nov. 27, 1912. A. L. Richardson, Clerk. [30]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

AT LAW—No. 437.

OREGON-WASHINGTON RAILROAD & NAV-
IGATION COMPANY, a Corporation,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation on Writ of Error.

United States of America,

District of Idaho,—ss.

To the United States of America, and to Its Attorney, C. H. LINGENFELTER, Greeting:

You are hereby cited and admonished to be and

appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, District of Idaho, wherein the Oregon-Washington Railroad & Navigation Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf:

Given under my hand at Coeur d'Alene in said District, this 27th day of November, 1912.

FRANK S. DIETRICH,
Judge.

Attest: A. L. RICHARDSON,
Clerk. [31]

Service of the within and foregoing Citation hereby acknowledged by copy this 27th day of November, 1912.

C. H. LINGENFELTER,
United States Attorney for the District of Idaho.

[Endorsed]: No. 437. In the United States District Court, District of Idaho, Northern Division. Oregon-Washington Railroad & Navigation Company, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation. Filed November 27th, 1912. A. L. Richardson, Clerk. [32]

Return to Writ of Error.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk. [33]

**[Certificate of Clerk U. S. District Court to
Transcript of Record, etc.]**

*In the District Court of the United States for the
District of Idaho, Northern Division.*

OREGON-WASHINGTON RAILROAD & NAV-
IGATION COMPANY, a Corporation,
Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages, numbered from 1 to 34, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$23.60, and that the same has been paid by the plaintiff in error.

Witness my hand and the seal of said Court this 9th day of December, 1912.

[Seal]

A. L. RICHARDSON,
Clerk. [34]

[Endorsed]: No. 2237. United States Circuit Court of Appeals for the Ninth Circuit. Oregon-Washington Railroad & Navigation Company, a Corporation, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Idaho, Northern Division.

Filed January 3, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**[Order Enlarging Time Ten Days to File Record in
Circuit Court of Appeals.]**

*In the United States District Court, for the District
of Idaho, Northern Division*

No. 437.

OREGON-WASHINGTON RAILROAD & NAV-
IGATION COMPANY, a Corporation,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

This matter coming on for hearing upon the application of the plaintiff in error for an extension of time within which to file its transcript in the United States Circuit Court of Appeals for the Ninth Circuit, and to docket said case, and the Court being satisfied that good cause exists for granting such extension,—

IT IS ORDERED, that said time for filing said transcript and docketing said case be, and the same is hereby, extended for a period of ten days.

Done this 27th day of December, 1912.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: No. 2237. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time Ten Days to File Record Thereof and to Docket Case. Filed Jan. 6, 1913. F. D. Monckton, Clerk.

**United States Circuit Court of Appeals
for the Ninth Circuit**

OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY,

Plaintiff in Error

vs.

UNITED STATES OF AMERICA,

Defendant in Error

No. 2237

*Upon Writ of Error to the United States District Court of the District
of Idaho, Northern Division*

OPENING BRIEF OF PLAINTIFF IN ERROR

OPENING BRIEF OF PLAINTIFF IN ERROR.
STATEMENT OF THE CASE.

This was an action against the Plaintiff in Error under the Twenty-eight Hour Law (*Act June 29th, 1906, C. 3584, 34 Stat. 607*), involving the shipment of a car of hogs from Endicott, in the State of Washington, to Wallace, in the State of Idaho. It was undisputed that the hogs were loaded at Endicott at 11:30 a. m. (*Trans.*

pg. 14), were accompanied by a man in charge named John Daubert, who executed the 36-hour release provided in the statute. The shipment arrived at Wallace about 8:55 p. m. the following day (*Trans. pg. 19*), and was almost immediately spotted at the stock chute at the stock yards of the Plaintiff in Error at Wallace (*Trans. pg. 20*).

It is likewise undisputed that the car of hogs was not unloaded until the following morning, when the car was transferred to the Northern Pacific Railway Company. moved about a mile and a half to their stock pens, where it was unloaded by the consignee, Mahoney Bros. (*Trans. pg. 17*).

Upon the trial the Defendant in Error, being the plaintiff below, established the foregoing facts, but in addition it appeared that the shipment of the car of hogs was accompanied by John Daubert as caretaker, who went along with the shipment for the express purpose of looking after the hogs (*Trans. pg. 15*), and that just before the train had arrived at Wallace, this caretaker asked the conductor of the train to spot the car at the stock yards. Immediately after the arrival of the train, this caretaker hunted up Mr. Mahoney of Mahoney Bros., the consignee of the shipment, and told him that the car had arrived and was spotted at the stock yards and that the time was pretty nearly up to unload them (*Trans. pg. 15*).

At the close of the Government's testimony the Plaintiff in Error moved the Court for a non-suit, on the ground that the failure to unload the car within the statutory limit was due to unavoidable causes which could not be anticipated or avoided by the exercise of due diligence and foresight, and for the further reason that such confinement was not done knowingly or wilfully within the meaning of the statute. This motion the Court denied (*Trans. pg. 18*).

Thereupon the Plaintiff in Error introduced certain testimony tending to show that the confinement of the hogs in the car beyond the statutory limit, was due to unavoidable causes and was not done wilfully or knowingly within the meaning of the statute, and at the close of all the testimony the Plaintiff in Error moved for a directed verdict in its favor and this motion was denied by the Court (*Trans. pg. 24*).

The Defendant in Error likewise moved for a directed verdict at the close of the evidence, which motion the Court granted (*Trans. pg. 24*).

SPECIFICATIONS OF ERROR.

The Plaintiff in Error hereby designates the following errors which it relies upon in this case:

1. The District Court erred in denying the motion of Plaintiff in Error for a non-suit at the close of the Government's case.

2. The District Court erred in refusing to direct a verdict in favor of the Plaintiff in Error at the close of all the testimony.

3. The District Court erred in granting Defendant in Error's motion for a directed verdict.

4. The District Court erred in entering judgment for the Defendant in Error on the verdict of the jury.

ARGUMENT.

For convenience we will refer to the parties to this cause hereafter, as the Railroad Company, instead of the Plaintiff in Error, and the Government, instead of the Defendant in Error.

From the foregoing statement of the case it will be seen at once that no question is raised as to the confinement of the car of hogs beyond the statutory limit. The Specifications of Error all go to one question and will be discussed together. That question is, did the Railroad Company either at the close of the Government's case or at the close of all the testimony show that the confinement of the hogs beyond the 36 hours was due to unavoidable causes within the terms of the statute, or that such confinement had not been done knowingly and wilfully within the meaning of the statute.

Before discussing the facts in the case we desire to suggest certain general propositions which, in our opinion, have become well established by the Courts.

In the first place, it is not mere confinement beyond the statutory period which fixes the liability of the Railroad Company, but such confinement must be done knowingly and wilfully. The Courts have frequently defined these two words as used in the statute under consideration. "Knowingly" and "wilfully" have been defined as "intentionally" or "purposely."

U. S. vs. Sioux City Stock Yards Co., 162 Fed. 556.

The word "wilfully" has been defined as "voluntarily" or "intentionally."

U. S. vs. Atchison, T. & S. F. Ry. Co., 166 Fed. 160.

Again it has been said:

" 'Knowingly' evidently means with a knowledge of the facts which taken together constitute the failure to comply with the statute, as in the case where one carrier receives from another a car loaded with cattle, and, with knowledge of how long they then had been confined in the car without rest, water or food, prolongs the confinement until the statutory limit is exceeded. 'Wilfully' means something not expressed by 'knowingly', else both would not be used conjunctively. * * *

But it does not mean with intent to injure the cattle or to inflict loss upon their owner because such intent on the part of a carrier is hardly within the pale of actual

experience or reasonable supposition. So, giving effect to these considerations, we are persuaded that it means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements.”

St. Louis & S. F. R. Co. vs. U. S., 169 *Fed.* 69.

The foregoing statement has been quoted and approved in the following cases:

U. S. vs. Stock Yards Terminal Ry. Co., 178 *Fed.* 19;

St. Joseph Stock Yards Co. vs. U. S., 187 *Fed.* 104;

Chicago, B. & Q. R. Co. vs. U. S., 194 *Fed.* 342.

Secondly, the words “due diligence and foresight” have been construed as follows:

“The measure of ‘due diligence and foresight’ is that diligence and foresight which persons of ordinary prudence and care commonly exercise under similar circumstances. And the ‘due diligence and foresight’ which condition the anticipation and avoidance of the other inidental or unavoidable causes specified in this law, is that degree of diligence and foresight which reasonably prudent and careful men ordinarily exercise under like circumstances. An ‘accidental or unavoidable cause’ which cannot be avoided by the exercise of due diligence

and foresight in the meaning of the law is a cause which reasonably prudent and careful men, under like circumstances, do not and would not ordinarily anticipate, and whose effects under similar circumstances they do not and would not ordinarily avoid."

Chicago, B. & Q. R. Co. vs. U. S., 194 *Fed.* 342-344.

A third and very important principle which the Courts have read into this Act is this: That the legal presumption in cases of this kind in determining whether a carrier has acted "knowingly" or "wilfully," or without due diligence and foresight, is that men ordinarily discharge their duties and comply with the law. Hence, it has been held that one carrier in receiving a stock shipment from another, in the absence of notice to the contrary, has the right to rely on the presumption that the preceding carrier had discharged its duty.

St. Joseph Stock Yards Co. vs. U. S., 187 *Fed.* 104-106.

With these general principles in mind, let us briefly review the facts, which in our view establish beyond doubt that the Railroad Company in this case did not act "knowingly" and "wilfully" in confining the car of hogs beyond the statutory limit, and further showed that said confinement was due to an unavoidable cause which the Railroad Company could not reasonably anticipate. It must be remembered in the first place that this shipment of hogs was in charge of a caretaker repre-

senting the consignor, and that the only purpose of his going along with the car was to look after the hogs and take proper care of them. Besides this, the bill of lading expressly stipulated that the consignor was to do everything required in the way of feed, water, rest and unloading the hogs, and while we are aware that this stipulation as against the Government, would not relieve the Railroad Company of its duty under the 28 Hour Law, still we insist that it is a circumstance which must be taken into consideration along with the other facts of the case in determining whether the Railroad Company acted with the prudence and foresight required by the statute.

This shipment was consigned to Mahoney Bros., at Wallace, Idaho. No directions had been given to the Railroad Company by the consignee as to where the hogs were to be unloaded. It would seem, therefore, that in the absence of such directions, the Railroad Company could do but one thing, and that was to spot the car for unloading at its own stock pens in Wallace. Again, this was done at the direction and upon the express request of the man in charge of the shipment. Now it is undisputed that the man in charge of this car told the conductor of the freight train which brought it into Wallace, that he was going to notify the consignee to unload the stock (*Trans.* pg. 20). And besides this, the man in charge of the car actually did notify one of the Mahoney

Bros., that the car had arrived, was spotted at the stock chute and that the 36 hours would soon be up.

Other very convincing circumstances showing that this railroad company was endeavoring to comply with the law and was taking reasonable precautions to prevent the confinement of the hogs beyond the statutory limit, is found in the testimony of H. A. Bard, the Agent for the Railroad Company at Wallace (*Trans. pg. 21*). Bard testified that, although his usual time for leaving the station of the Railroad Company was six o'clock, he waited around until after nine o'clock until the train transporting this car of hogs arrived at Wallace. That he knew of the expected arrival of this car and that he waited around for the conductor for the express purpose of keeping away from violating the 36 Hour Law. We ask the Court to read this testimony carefully.

The conductor's jurisdiction over the car of course terminated when the car was spotted at the stock yards and, as a matter of fact, his attention was not again directed to it until the following morning when he was going out on another train.

As soon as the agent became advised the following morning that the car had not been unloaded he immediately communicated with Mahoney Bros., and at their direction had the car transferred to the Northern Pacific, whence it was taken to Mahoney Bros.' own stock yards (*Trans. pgs. 22 and 23*).

It seems to us, in view of the foregoing circumstances, that the Railroad Company having completed the shipment of the car of hogs, and having made a constructive delivery of the same to the consignee, certainly had a right to assume that the consignee, or at least the man in charge of the car, who was a representative of the owner, would attend to unloading the hogs as provided in the bill of lading. At least it seems to us the Railroad Company had the right to rely upon such assumption and upon the presumption that the man in charge of the car would perform his duty, until it had actual notice that the car had not been unloaded.

It should be remembered that an entirely different situation existed in this case from that where it is necessary to unload the cattle or hogs during shipment. It will be noticed that the title of the 28 Hour Act reads: "An Act to prevent cruelty to animals *while in transit* by railroad * * *." In the case at bar the transit or carriage had ended. The car was at the disposition of the consignee and nothing more remained for the Railroad Company to do in connection with the shipment unless it can be said that under the Act it was the duty of the Railroad Company to unload the hogs. But if it was the duty of the Railroad Company to unload the hogs it was likewise the duty of the Railroad Company to give them rest, water and feed. The statute makes no distinction between these requirements. The hogs

must be unloaded, rested, watered and fed. Now the mere suggestion that it was the duty of the Railroad Company under these circumstances not only to unload, but to feed, water and rest the hogs, shows the absurdity of the proposition, and to our mind demonstrates that it was only the purpose of the Act to require unloading, etc., etc., while the shipment was in transit. We presume the idea of Congress was this; that after cattle or hogs had been confined in transit on a moving train for 28 or 36 hours at the outside, as the case might be, they would be in no condition to resume the journey until they had been unloaded, watered and fed and rested for five hours. We seriously doubt if Congress in this Act attempted to exert, or in fact could lawfully exert any control over the shipment after it had reached its destination and there had been a delivery, actual or constructive to the consignee.

But even assuming that this construction of the Act for which we are contending is not the true one, still we insist that the Railroad Company is not liable because the confinement of the hogs was due to an unavoidable cause which could not be anticipated or avoided by the exercise of due diligence and foresight.

As stated in *St. Joseph Stock Yards Company vs. U. S.*, *supra*, the legal presumption is that men ordinarily discharge their duties and comply with the law. The shipment of hogs having reached its destination,

and been spotted where they could have been easily unloaded, and the consignee having been notified of its arrival, under circumstances which would lead the Railroad Company to believe that the hogs would be unloaded promptly, it seems to us that the Railroad Company had the right to assume that this would be done, at least until it had actual notice to the contrary.

While the statute under consideration is not criminal but only penal in its nature, still we feel that the Courts should also recognize an honest attempt upon the part of the Railroad Company to comply with the law. The evidence in this case not only fails to disclose any lack of diligence or foresight, or due care in respect to this shipment of hogs, but on the contrary shows a very commendable anxiety on the part of the employees of the Railroad Company to avoid a violation of the Act. The conductor in charge of the freight train took pains to comply immediately with the request of the caretaker to spot the car for unloading, and took further pains to communicate to Mr. Bard, the Agent, that the car had been spotted and that the caretaker had gone to notify the consignee. Mr. Bard, the Agent, showed his anxiety to avoid a violation of the law by remaining at the station long after his customary time for leaving and by ascertaining from the conductor what arrangements had been made for unloading the stock. Under these circumstances it seems to us unjust to punish the

Railroad Company merely because it assumed that the consignee and the caretaker—the two men most interested in giving the hogs proper care—failed to perform their duty. Instead of there being an intentional and wilful confinement of the hogs beyond the limit, the evidence discloses a *bona fide* attempt upon the part of the railroad employees to comply with the law.

The Court below should have either granted the motion for non-suit, or at least directed a verdict in favor of the Railroad Company, and we respectfully submit that the judgment of the trial Court should be reversed, with instructions to dismiss the action.

Respectfully submitted,

A. C. SPENCER,

HAMBLETON & GILBERT,

*Attorneys for Plaintiff in
Error.*

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IN THE

United States Circuit Court of Appeals for the Ninth Circuit

OREGON WASHINGTON RAILROAD &
NAVIGATION COMPANY a Corpora-
tion,

Plaintiff in Error

No. 2237.

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

*Upon Writ of Error in the United States District Court of
Idaho, Northern Division.*

BRIEF OF DEFENDANT IN ERROR

Defendant in Error, the United States answering the brief of Plaintiff in Error, finds that the issues are compassed to two propositions, as follows:

1. Was it the duty of the railroad company to properly care for the hogs on their arrival in Wallace, Idaho, on the evening of March 7, 1912 before the 36-hour period expired, notwithstanding the car was accompanied by a caretaker who informed the conductor of the train in which the car containing the hogs was carried, that he would notify the consignee to unload the stock, or did the duty devolve upon the railroad company to unload for rest, water and feed upon the non-compliance by the caretaker and consignees?

2. Was the confinement of the stock beyond the time limit due to an unavoidable cause which could not be anticipated or avoided by the exercise of due diligence and foresight?

The primary purpose of the act known as "The 28-hour law" is to prevent cruelty to animals while in transit and under the care and control of the carrier. It is a humane act. The contractual rights of the owner of the stock and the railroad company are ancillary to prevention against cruelty to the stock by long confinement and improper attention.

"The statute was not primarily intended for the benefit of the owner. Indeed it is restrictive of their rights. The penalty does not go to the consignor, but to the United States, for each failure to unload cattle, regardless of who may own them, and even if the owner consented to their confinement beyond a period of 36 hours. The title of the act is 'To prevent cruelty to animals in transit,' its declared intent being to prohibit their continuous confinement beyond a period of twenty-eight hours, except upon the contingencies hereinbefore stated. Regardless of the number of shipments, at any time and place where they are wilfully and knowingly confined beyond the lawful period, there is a violation of the statute as to the animal or animals then and there in custody for transit in interstate commerce. X X."

220 U. S. 94, 55 L. Ed. 384.

"The act to prevent cruelty to animals while in transit," approved June 29, 1906, (34 Stat. at L. 607, Chap. 3594, U. S. Comp. Stat. Supp. 1909, p. 1178), provides:

"Sec. 1. That no railroad, . . . whose road forms any part of a line of road over which cattle . . . or other animals shall be conveyed . . . (in interstate commerce)

... shall confine the same in cars, boats, or vessels of any description for a period longer than twenty-eight consecutive hours without unloading the same in a humane manner, into properly equipped pens, for rest, water and feeding, for a period of at least five consecutive hours, unless prevented ... by unavoidable causes . . . *Provided*, That upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading, or other railroad form, the time of confinement may be extended to thirty-six hours. In estimating such confinement the time consumed in loading and unloading shall not be considered, but the time during which the animals have been confined without such rest or food or water on connecting roads shall be included, it being the intent of this act to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon the contingencies hereinbefore stated.

"Sec. 2. That animals so unloaded shall be properly fed and watered during such rest. . . .

"Sec. 3. That any railroad . . . who knowingly and wilfully fails to comply with the provisions of the two preceding sections shall, for every such failure, be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars.

"Sec. 4 That the penalty created by the preceding section shall be recovered by civil action in the name of the United States. . . ."

. Briefly adverting to the evidence, the testimony of J. H. Manning, conductor in charge of the train, disclose that the caretaker was to inform Mahoney Brothers, consignees, of the

arrival of the stock at Wallace, Idaho. (Trans. 20.) That the caretaker intended to and did abandon the stock. The conductor also knew that the stock would remain loaded until the next morning and that he passed by the next morning and saw the stock still there; that the car was not unloaded until the next morning. (Trans. 21) when they were delivered to Mahoney Brothers having been confined for a period of forty-four hours and five minutes from the time the stock was loaded at Endicott, Washington, until they arrived and were delivered to the consignees at Wallace.

The agent at Wallace also knew that the hogs were confined in the car at Wallace during the night of their arrival and that the conductor so informed him. The uncontradicted testimony is that the company had knowledge that the car remained unloaded and that the time had expired, and that no attempt was made by the railroad company to care for them, but that its officers and agents knowingly, wilfully and intentionally permitted the stock to remain in the car beyond the thirty-six hour period.

The word knowingly is used in the twenty-eight hour law in its commonly accepted terms and sense, and means with a knowledge of the facts which, taken together, constitute the failure to comply with the statute.

Wilfully means something not expressed by knowingly, else both would not be used conjunctively. And presumptively, it means something not expressed by willingly, else the change would not have been made in the statute. But it does not mean with the intent to injure the cattle or to inflict loss upon the owner because such intent on the part of such carrier is hardly within the pale of actually expressed or reasonable supposition.

So giving effect to these considerations we are persuaded that it means purposely or obstinately, and is designed to describe the attitude of a carrier, who, having a free will or chance, either intentionally disregards the statute or is primarily indifferent to its requirements. ,

St. Louis & San Francisco Ry. Co. vs. United States,
169 Fed. 71.

The word wilfully in the twenty-eight hour law does not require that there should be an evil intent to constitute the offense, but it is sufficient if the act was done knowingly and purposely.

U. S. vs. N. Y. Cen. & Hudson River Ry., 165 Fed. 833.

A carrier which receives live stock from a connecting carrier, after the animals have been already confined beyond the period prescribed by the twenty-eight hour law, and continues their transportation for several hours before unloading, is liable for negligence *per se*. Whether the carrier knowingly and wilfully fails to comply with the statute is a question for submission to the jury. ,

U. S. vs. N. Y. Cen. & Hudson River Ry., 156 Fed. 249

U. S. vs. Lehigh Valley R. R. Co., 184 Fed. 871,
affirmed 187 Fed. 1006.

U. S. vs. St Joseph Stock Yards Co., 181 Fed. 625.

U. S. vs. North Pac. Terminal Co., 181 Fed. 879.

A similar case, in many respects, was passed upon by the Eighth Circuit in the case of Chicago, Burlington & Quincy Ry. Co. vs U. S., 195 Fed. 241, in which the following pertinent language is used by Sanborn, Circuit Judge :

“ * * * * * The facts that their owner or caretaker,

who accompanies them, agrees to care for, feed and water them on their way, and that food and water with which he might have performed his agreement were easily accessible to him, are not sufficient to establish this excuse, where the animals are knowingly and wilfully confined more than twenty-eight hours and they do not actually receive proper food, or water or space and opportunity to rest.

"Nor is it essential to the recovery of the penalty that proof should be made that the defendant knew that the animals did not receive proper food, water or space to rest in the cars which transported them. It is enough that the railroad company knowingly and wilfully confined them more than twenty-eight hours, and the animals did not have proper food, water, space and opportunity to rest in the cars that carried them during the transportation."

The second proposition merits no consideration as the question of unavoidable cause which could not be anticipated or avoided by the exercise of due diligence and foresight is foreclosed by the knowledge of the employees that the hogs were in the car and that the car was spotted in the chutes of the railroad company for unloading, and the agents and employees voluntarily permitted them to remain in the car at Wallace, Idaho, until the next morning at 8:30 or 9:00 o'clock, when, at the request of Mahoney Brothers, consignees, the hogs were unloaded.

Section 2 of the act makes it obligatory on the company, in default of the owner or person having the custody thereof, to unload the same for the purposes mentioned in the statute, and such company shall have a lien upon such animals for food, care and custody furnished.

It is immaterial, in an action to recover a penalty under the

statute, whether failure to feed and water the stock is due to the default of the shipper or the carrier. The act requires the shipper to feed and water the stock in the first instance, but, if he fail, the carrier must do it for him.

U. S. vs. Louisville & Nashville Ry. Co., 18 Fed. 480.

U. S. vs. O. S. L. Ry. Co., 160 Fed. 526.

No error having been made by the Court in instructing a verdict for the plaintiff, the judgment being for the right party, should be affirmed.

Respectfully submitted,

C. H. LINGENFELTER,

*United States Attorney for the District of Idaho, Attorney
for Defendant in Error.*

